THE UNIVERSITY OF ALBERTA

REFUGEES AND THE IMMIGRATION ACTS OF THE UNITED KINGDOM AND CANADA

by

(C) HUGH D. DAVIES

A THESIS SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS

FACULTY OF LAW

EDMONTON, ALBERTA

FALL, 1982

Material from pp. 134 to the end

~~are~~ Act consists of public Acts of Parliament and is therefore not subject to any copyright restrictions

H D Dai

15 October 1982

MICRO

THE UNIVERSITY OF ALBERTA

RELEASE FORM

NAME OF AUTHOR: HUGH D. DAVIES

TITLE OF THESIS: REFUGEES AND THE IMMIGRATION ACTS OF THE UNITED KINGDOM AND CANADA

DEGREE FOR WHICH THESIS WAS PRESENTED: MASTER OF LAWS

YEAR THIS DEGREE GRANTED: 1982

Permission is hereby granted to THE UNIVERSITY OF ALBERTA LIBRARY to reproduce single copies of this thesis and to lend or sell such copies for private, scholarly or scientific research purposes only.

The author reserves other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without the author's written permission.

H D Davies

PERMANENT ADDRESS

14312 - 90A Avenue
Edmonton, Alberta
T5R 4X6
Canada

Dated 15th October 1982

THE UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled REFUGEES AND THE IMMIGRATION ACTS OF THE UNITED KINGDOM AND CANADA submitted by HUGH D. DAVIES in partial fulfilment of the requirements for the degree of Master of Laws.

.....

Supervisor

.....

.....

.....

External Examiner

Date 15th October 19 82

IN MEMORY OF MY FATHER

JOHN HOWARD DAVIES

ABSTRACT

The central concern of this study is to examine the legal posture, both legislative and judicial, adopted in relation to refugees by the United Kingdom and Canada. Since the British and Canadian judiciaries do not view international obligations entered into by their respective governments as part of the domestic law unless specifically incorporated in legislation, the study is predicated on the assumption that their commitment to such international obligations, set out in the 1951 Refugee Convention, is best measured by reference to their Immigration Acts and the judicial attitude towards the administrative power bestowed by them. Prior to the twentieth century, British state policy was generous to refugees, except during those brief periods when the country felt itself to be under external threat. Territorial supremacy, involving the freedom to grant or refuse asylum at will, was only an issue in the days of Empire to the extent that it was unclear, from a legal point of view, whether the Crown or Parliament had the right to assert it. However, the arrival of large numbers of destitute immigrants and refugees from eastern Europe shortly after the turn of the century, followed by the First World War and the crumbling of imperial authority, resulted in exclusionary aliens legislation which has continued till the present day. But, unlike the earlier extradition legislation which was the first in modern times to refer to refugee characteristics and left the adjudication of what constitutes a political offence to the courts, aliens legislation up to and including the present has left the question of asylum to be decided by the

government. The judicial attitude towards such discretion has always been deferential. The right of access of refugees to the judicial process and natural justice has been restricted by the consistent judicial characterization of their claims as amounting only to requests that the privilege of asylum be extended to them rather than to demands that their rights be observed.

The current British Immigration Act is cast in framework form and makes no mention of refugees. Such provisions are artfully contained only in immigration rules laid before Parliament by the government and easily revocable at any time. These rules have been held to be mere guidelines pinpointing the way in which discretion is likely to be exercised in the future and, while the exercise of this discretion is appealable, departure from the rules does not constitute unfairness.

Canada, for geographical reasons, has not had to face the problem associated with being a country of first asylum for large numbers of refugees. Although the Canadian judicial attitude towards the admission of aliens is broadly the same as the British, the Federal Parliament has felt able to be far more generous in its attitude to refugees. The Convention definition is incorporated in the current Immigration Act and specific, though complex, procedures laid down for refugee status determination. The fact that the Federal Parliament has committed itself to procedural specificity in relation to refugees not only fulfils the spirit of the Convention better but also has allowed room for the application of the doctrine of procedural fairness to ministerial procedures beyond the minimum duty of good faith imposed on all administrative decision-makers.

TABLE OF CONTENTS

CHAPTER		PAGE
1	BRITISH LEGAL ATTITUDES TOWARDS REFUGEES	1
	Introduction	1
	Asylum and the Crown Prerogative	2
	Asylum and the Extradition Acts	7
	Aliens Legislation of the Twentieth Century	12
	NOTES: CHAPTER 1	16
2	REFUGEES IN THE BRITISH IMMIGRATION PROCESS	21
	Refugees and Judicial Review prior to the Immigration Appeals Act, 1969	21
	The 1951 Refugee Convention: Incorporation of International Obligations into Municipal Law	24
	Soblen's Case	27
	Refugees: Policy versus Justiciability	31
	The Immigration Appeals Act, 1969	36
	The Immigration Act, 1971	37
	The Immigration Rules and the Fairness Question	41
	NOTES: CHAPTER 2	54
3	CANADIAN LEGAL ATTITUDES TOWARDS REFUGEES	63
	Introduction	63
	The Immigration Appeal Board	68
	The 1951 Refugee Convention: The Constitutional Position	72
	NOTES: CHAPTER 3	75

CHAPTER		PAGE
4	REFUGEES IN THE CANADIAN IMMIGRATION PROCESS	79
	The Immigration Act, 1976	79
	Characterization of the Inland Determination Process	84
	a) The Refugee Status Advisory Committee	84
	b) Redeterminations by the Immigration Appeal Board	87
	The Fairness Question	95
	NOTES: CHAPTER 4	107
	CONCLUSION	115
	NOTES: CONCLUSION	120
	BIBLIOGRAPHY	123
	TABLE OF CASES	127
	TABLE OF STATUTES	132
	APPENDICES	
	Appendix A: Immigration Act, 1971 (United Kingdom)	134
	Appendix B: Immigration Act, 1976 (Canada)	192

ABBREVIATIONS

B.D.I.L.	British Digest of International Law
B.S.P.	British Sessional Papers
B.Y.I.L.	British Yearbook of International Law
C.A.	Court of Appeal
C.L.I.C.	Canadian Law Information Council
C.L.J.	Cambridge Law Journal
Cmd; Cmnd	Command Paper
C.Y.I.L.	Canadian Yearbook of International Law
D.C.	Divisional Court
E.T.S.	European Treaty Series
H.C.	House of Commons (United Kingdom)
H.C. Deb.	House of Commons Debates (Canada)
H.L.	House of Lords
H.P.D.	Hansard Parliamentary Debates (United Kingdom)
I.A.B.	Immigration Appeal Board
I.A.C.	Immigration Appeal Cases (Canada)
I.C.L.Q.	International and Comparative Law Quarterly
Imm. A.R.	Immigration Appeal Reports (United Kingdom)
L.Q.R.	Law Quarterly Review
McGill L.J.	McGill Law Journal
M.E.I.	Minister of Employment and Immigration (Canada)
M.L.R.	Modern Law Review
M.M.I.	Minister of Manpower and Immigration (Canada)
Ott. L.R.	Ottawa Law Review
S.C.C.	Supreme Court of Canada
S.I.	Statutory Instrument
T.D.	Trial Division
U.Chi.L.R.	University of Chicago Law Review
U.N.T.S.	United Nations Treaty Series
U.T.L.J.	University of Toronto Law Journal

CHAPTER 1

BRITISH LEGAL ATTITUDES TOWARDS REFUGEES

Introduction

The legal history of refugees is inevitably that of the stance adopted by the Crown and Parliament towards the alien. The concept of the refugee as an alien of a special kind requiring special treatment in the form of freedom from seizure, exclusion, expulsion or extradition emerged haphazardly over the centuries. Political considerations have always been paramount in defining the British legal attitude because of both the internal threat posed by such aliens to the social fabric of the country and the external danger to relations with neighbouring countries represented by acceptance of them. Consequently, this attitude has varied with the ascendancy, or lack of it, which Britain believed herself to have in Europe at any given time.

In the earliest period of the common law, the distinction between subjects enjoying the protection of that law and aliens who were entirely without its protection, or civil liberties at all, was made on the basis of allegiance to the Crown.[1] Such allegiance was only owed by those born within the King's territory and a formal act of naturalization was required to change the status of an alien. In the ancient case of Elyas Daubeny,[2] Edward I in 1295 granted that Daubeny was to be considered as "Anglicum purum" and able to sue in the courts, though he had been born out of the realm.

Four hundred years later, this process of naturalization was first made in England for refugees when, following an influx of Protestant refugees fleeing the persecutions of Louis XIV, An Act for the Naturalization of Foreign Protestants was passed in 1708.[3] This enactment, though of short duration (it was repealed in 1711),[4] marks the first attention paid to refugees by the British Parliament.

Asylum and the Crown Prerogative

Daubeny's case is also worth noting for its use of the Crown prerogative. Within little more than a century, the prerogative in this area had been absorbed by Parliament on the ground that changing alien status to subject status might involve an alteration of the rights of other persons which could only be affected by the legislature. Yet, the use of the Crown prerogative over aliens claiming asylum in order to remove them from the country was less easily dislodged from the sovereign.

The right of sanctuary or asylum is an ancient one in England. It accrued to a fugitive in private law and was connected with abjuration of the realm whereby the fugitive, after finding ecclesiastical sanctuary, was allowed to depart, unharmed, to the nearest port of embarkation or border. The oath of abjuration bound him never to set foot in England again, without the King's permission.[5] This right lingered on until abolished by a statute in 1623 which enacted that "All Statutes taking away sanctuary are revived and all privileges of sanctuary are abolished."[6] Whether the native fugitive in claiming sanctuary was, in fact, laying claim to a common law right or

requesting that a privilege be extended to him is unclear. However, there is no equivocation in the English legal attitude towards the foreign fugitive who claims asylum. In common with other states, the status of asylee has been treated, by England, as a right of the state to grant and not of the fugitive to claim.

But to which organ of state, the executive or the legislature, does this right belong? The question has only been pertinent for Britain at times of national crisis. From Tudor times until the present century, Britain's generous policy of asylum, with two exceptions, has been characterized by the complete absence of both laws and executive action and also by the lack of discrimination it showed towards the type of refugee claiming asylum.[7]

However, the argument as to which organ of state was to control refugees (when control was thought to be necessary) was hotly debated during the Alien Act debates (1793-1824) when Britain did exercise its residual right to legislate against aliens. The era of the French Revolution and Napoleonic wars provides the first of the exceptions referred to above. Suspicion, as to the motives of the political refugees then pouring out of France,[8] led to the passing of draconian measures for detention without bail, expulsion and transportation of aliens.[9] The Alien Act, 1793, was renewed periodically until, with the temporary restoration of peace in 1802, it was enacted in less harsh form.[10] With the resumption of war, the measures were reinstated in all their former stringency but again relaxed after the peace of 1814[11] and from 1816 their re-enactment was vehemently contested in Parliament.[12] They were finally abandoned in 1826

when the Alien Act of that year provided merely for the registration of aliens with no mention of expulsion, exclusion or deportation.[13] This Act was repealed by the Registration of Aliens Act, 1836[14] which remained in force, though unused (apparently because of the difficulty of enforcement[15]), for nearly seventy years.

The Parliamentary debates on the Alien Bills were the last occasion on which the Government asserted the existence of a Crown prerogative to expel refugees[16] and, then, the assertion was strongly resisted whenever put forward - the more easily for the claim being based on little and slender authority.[17]

The second, minor, exception to Britain's tolerant policy of asylum occurred during the revolutionary turmoil in Europe in 1848 when the government was empowered by Parliament to expel any foreigners who could be considered dangerous to the peace of the Kingdom.[18] It was, however, a mild measure in its terms, giving the right of appeal to the Privy Council when an expulsion order was made and granting the power for one year only.

Consequently, for a period of eighty years (from 1825 to 1905) not only were there no expulsions of aliens from Britain, whether refugees or not, there was not even any statutory authority (with the exception of the 1848 Act above referred to which was never, in fact, implemented) to enable the executive to prevent refugees from coming and going as they pleased.[19] Moreover, as has been seen, the possibility of using the royal prerogative in derogation of the privilege of asylum had never been advanced with great conviction by the Government and was unlikely to be tested, for fear of the political

repercussions likely to ensue. Writing in 1875, Sir Thomas Erskine May stated:

> It has been a proud distinction for England to afford an inviolable asylum to men of every rank and condition, seeking refuge on her shores, from persecution and danger in their own lands. England was a sanctuary to the Flemish refugees driven forth by the cruelties of Alva; to the Protestant refugees who fled from the persecutions of Louis XIV; and to the Catholic nobles and priests who sought refuge from the bloody guillotine of revolutionary France. All exiles from their own country - whether they fled from despotism or democracy, - whether they were kings discrowned, or humble citizens in danger, - have looked to England as their home. Such refugees were safe from the dangers which they had escaped. No solicitation or menace from their own government would disturb their right of asylum; and they were equally free from molestation by the municipal laws of England. The Crown indeed had claimed the right of ordering aliens to withdraw from the realm; but this prerogative had not been exercised since the reign of Elizabeth. From that period, - through civilian wars and revolutions, a disputed succession, and treasonable plots against the state, - no foreigners had been disturbed. If guilty of crimes, they were punished; but otherwise enjoyed the full protection of the law. It was not until 1793, that a departure from this generous policy was deemed necessary in the interests of the state.[20]

May was correct, at that time, in describing the Crown prerogative in this area as dead. It was not buried, however, and was resuscitated in 1891, in the important case of Musgrove v. Chung Teeong Toy[21] where Lord Halsbury L.C. declared (obiter) that "an alien has [no] legal right, enforceable by action to enter British territory."[22] By implication, therefore, this statement has to be viewed as reasserting the prerogative since, as has been seen, there existed at that time no legislation effective to prohibit an alien's entry into the country.[23] Fifteen years later, Lord Atkinson baldly stated that the Crown "undoubtedly possessed [the power] to expel an alien from the Dominion or to deport him to the country whence he entered the Dominion."[24] Lord Halsbury's statement was made

without citation of any authority and that of Lord Atkinson was the result of a false equation of the position of the state, under international law (undoubtedly holding the power to expel), with that of the Crown, under municipal law. There are even dicta from more recent times in support of the prerogative. In 1961, in the Soblen case, Lord Denning M.R. took its existence as axiomatic.[25] Again, in 1969 in Schmidt v. Secretary of State for Home Affairs,[26] he said:

> I have always held the view that at common law no alien has any right to enter this country except by leave of the Crown; and the Crown can refuse leave without giving any reason. The common law has now been overtaken by the Aliens Acts and the Orders there under.[27]

Similarly, Lord Widgery L.J. also without citing authority, maintained:

> . . . when an alien approaching this country is refused leave to land, he has no right capable of being infringed . . . . In such a situation the alien's desire to land can be rejected for good reason or bad, for sensible reason or fanciful or for no reason at all.[28]

However, as Lord Denning remarked, with the passing of the Aliens Restriction Act in 1914, the question of the survival of the prerogative passed into history.[29] By this enactment, all that the Crown had claimed in the past, or had had claimed for it by others on its behalf, was thereby given to the executive by Parliament.

Before this and the other Aliens Acts of the present century are considered in relation to refugees, it is necessary to survey briefly the history of extradition in Britain, for it was in nineteenth century enactments relating to the return of fugitive offenders that provision was first made for political refugees.

As will be seen, the concept of asylum for the political offender has traditionally been regarded, both by government and Parliament, as sacred and eminently worthy of forming a valid exception to the principle of extraditability. Moreover, when Parliament finally legislated in 1870, the responsibility for deciding what was, or was not, a political offence was reposed firmly, and permanently, in the judiciary.[30] By contrast, refugees untainted with offence have not fared so well. The factor of their alienage, with all the negative connotations implied by that word, has often, in the past, brought them up against the claims of the executive to control them. These claims are paramount at the present time. Unlike the provisions of the Extradition Act, 1870, the corresponding provisions of the Aliens Act, 1905, did not survive the emergencies and paranoias of the First World War and have never been revived, directly, by statute. Indeed, Parliament in the Immigration Act, 1971, making good its omission in the Aliens Restriction Act, 1914, expressly provided that

> [this] Act shall not be taken to supersede or impair any power exercisable by Her Majesty in relation to aliens by virtue of Her Prerogative.[31]

It is a sad anomaly that a refugee fleeing persecution, being the beneficiary merely of rules promulgated by the Secretary of State and revocable at any time, is not afforded the full statutory protection enjoyed by a fugitive fleeing prosecution.

Asylum and the Extradition Acts

Prior to the French Revolution, the main concern of extradition was

> . . . to provide for the surrender of political offenders, and the extradition treaties concluded up to that time had been made exclusively or primarily for the purpose of achieving their surrender.[32]

That Revolution, however, provided the moral basis for rebellion as a means to a political end, and the attitude of states towards the European upheavals following it gave impetus to the growth of the notion of political offences as worthy of exemption from extradition. England, for her part, although she had entered into numerous treaties from as far back as the twelfth century[33] up to the end of the seventeenth century, appears to have been more reluctant to make provision for extradition in the eighteenth and nineteenth centuries.[34] Moreover, viewing extradition as a derogation from the privilege of asylum, Britain was probably the first state to accept, as a matter of state practice, the concept of the political offence as furnishing a basis for refusal to extradite.[35] Political events in Gibraltar and Spain and the Aliens Act debates of 1815 and 1816 provided an opportunity for both members of the opposition and the Government to proclaim such a principle.[36] Again, in 1849, when the Austrian government demanded the return of the Hungarian revolutionary Kossuth from Ottoman territory, the Foreign Office advised the Porte not to yield and, subsequently, defended its refusal to surrender this refugee in the following terms:

> Now, if there is one rule which more than another has been observed in modern times by all independent States, both great and small, of the civilised world, it is the rule not to deliver up political refugees, unless the State is bound to do so by the positive obligations of a treaty . . . . Any independent government, which of its free will were to make such a surrender would be deservedly and universally stigmatised as degraded and dishonoured . . . .[37]

That Parliament was more firmly wedded to this exceedingly generous policy of asylum than the executive, however, is shown by the defeat of Lord Palmerston's government (the same government that had been responsible for the statement on the Kossuth affair) over the Conspiracy to Murder Bill, nine years later.[38] The Bill was prompted by an attempt on the life of Napoleon III by Orsini and Pierri. They had plotted in Britain and later fled there followed by complaints from the French government at the abuse of sanctuary made by the conspirators and, impliedly, by the government which had granted them asylum in the first place. But it was not long before the propriety and reasonableness of the complaints was accepted by Parliament as worthy of discussion.

In 1868, a Select Committee of the House of Commons was set up to advise on the whole question of extradition.[39] It is clear that the principle of non-extraditability for political offenders was widely accepted by the witnesses appearing before the Committee. Lord Hammond, who gave evidence as Permanent Under Secretary of State for Foreign Affairs, speaking after the event in the House of Lords, said:

> As regards the Extradition of political offenders, there was no difference of opinion between the witnesses. They all agreed that it was a thing not to be thought of, as being repugnant to the general feeling of all nations.[40]

It is of interest to note, however, that a qualification which would have brought assassins or would-be assassins within the orbit of extraditability (and which would cover the Orsini case), though included in the Select Committee's Report,[41] was not acted upon by Parliament. The Extradition Act, 1870,[42] merely provided that:

> [a] fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.[43]

Indeed, beyond making the determination as to whether an offence is political or not a matter for the surrendering state, the Act does not define a political offence at all. On the other hand, the Report was silent as to which authority - judicial or executive - should be empowered to define the term "political offence." This became the subject of debate in the House of Commons in the course of which it was stated for the government that

> . . . the Secretary of State found it more difficult to define a political offence than to define the Ulster custom and had finally given up the attempt and had left the matter to the Courts;[44]

and that,

> . . . the Secretary of State would not determine what was a political offence. A magistrate would determine that question, subject to appeal, in cases of dispute, to the Court of Queen's Bench. The Bill empowered the Secretary of State to interpose if he should think that the offence was a political one. But it did not give him authority to decide that it was.[45]

A further comment on the issue was made, after the event, in the Report of the Royal Commission on Extradition in 1878:

> The definition of what constitutes a breach of political laws . . . is beyond the reach of our executive or judicial authority. The attempt to draw the line of distinction has frequently been made but has always failed; and to leave the question as a nest-egg of diplomatic complication did not seem dignified or prudent in 1870, when Parliament legislated on the subject. On all hands it was then agreed that, as far as possible, the invidious discretion of giving up, or refusing to give up, the fugitive subjects of foreign Governments should be taken from the administration of the day, and reposed in the judiciary.[46]

Accordingly, the 1870 Act provided that the Secretary of State may, if he is of opinion that the offence charged is of a political character, refuse to send an order to a magistrate for the issue of the warrant for the arrest of the accused,[47] and that the magistrate shall receive any evidence which may be tendered to show that the offence is of a political character.[48]

The Fugitive Offenders Act, 1881,[49] did not include such a restriction. Section 2(1) reads:

> Where a person accused of having committed an offence . . . in one part of Her Majesty's dominions has left that part, such person . . . if found in another part of Her Majesty's dominions, shall be liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive.

The rationale seems to have been that an act committed in any one of Her Majesty's dominions was, nonetheless, an act directed against Her Majesty - a reasonable assumption for those times. However, the Act continued to apply, even when the Empire had given way to the Commonwealth. As a result, in 1963, during the Biafran secession, Chief Enahoro was extradited to the Federal authorities in Nigeria for an undoubtedly political offence.[50] The resulting public and Parliamentary furor resulted in the repeal of the 1881 Act and its replacement by the Fugitive Offenders Act, 1967.[51] This recognizes that Commonwealth countries may follow conflicting policies and made extradition between Britain and such countries subject to the same exception in favour of those accused of political offences as exists under the 1870 Act governing extradition to foreign countries.

Aliens Legislation of the Twentieth Century

The era of Britain as a haven for refugees drew to its close in 1905 with the passing of an Aliens Act[52] and was finally ended when the Aliens Restriction Act was enacted on the outbreak of the First World War.[53]

In the last twenty years of the Victorian age, there had been an influx into Britain of East European and, especially, Russian Jews fleeing the oppressive May laws of 1882 which evicted them from the Pale of Settlement following the assassination of Tsar Alexander II.[54] Although the percentage of aliens in proportion to the total population of the country was one of the smallest in Europe and a fraction of that of the United States,[55] alarm was growing.[56] In 1888, a Select Committee was set up by the House of Commons to inquire into the problem of the immigration of destitute aliens and it reported on

> . . . the possibility of [alien] legislation becoming necessary in the future, in view of the conditions of our great towns, the extreme pressure for existence among the poorer parts of the population, and the tendency of destitute foreigners to reduce still lower the social and material condition of our own poor.[57]

In the following ten years, two attempts were made in the House of Lords to introduce restrictive legislation but both failed.[58] Finally, a Royal Commission was set up in 1902 to investigate, again, alien immigration and, following its Report in 1903,[59] the Aliens Act, 1905,[60] was passed.

In view of the fears of urban over-crowding and increase in vagabondage and crime which prompted it, this legislation is surprisingly mild - indeed, in retrospect, it represents the high-water

mark of leniency to refugees in the twentieth century, up to and including the present. Only "undesirable" immigrants were to be excluded, which term embraced those convicted of crimes other than those of a political character[61] but

> . . . in the case of an immigrant who proves that he is seeking admission to this country solely to avoid persecution or punishment on religious or political grounds or for an offence of a political character, or persecution, involving danger of imprisonment or danger to life or limb, on account of religious belief, leave to land shall not be refused on the ground merely of want of means, or the probability of his becoming a charge on the rates.[62]

The first Government Bill had not been so generous. Reference was only made to those who could prove that they were "seeking admission to this country solely to avoid prosecution for an offence of a political character."[63] This confusion with the language of extradition legislation was pointed out by Sir Charles Dilke in the debate on the Second Reading.[64] Dilke must also be given the credit for drawing the attention of Parliament, on each occasion that the various Bills were debated, to the absence of provision for victims, not only of political but also of religious persecution.[65] As a result, the Aliens Act, 1905, made British legislative history in its specific safeguarding of asylum for religious refugees.

The Act also provided for the establishment of Immigration Boards at each port and for the making of regulations whereby immigrants refused leave to land might appeal the decisions of immigration officers.[66] As regards those claiming to be refugees within the terms of the Act, the Secretary of State informed the Immigration Boards that

> [though] the Secretary of State recognises that the absence of corroborative evidence frequently makes it extremely difficult for Boards to come to a decision in cases falling within the proviso to Section 1(3) of the Act, he hopes that, having regard to the present disturbed condition of certain parts of the Continent, the benefit of the doubt, where any doubt exists, may be given in favour of any immigrants who allege that they are flying from religious or political persecution in disturbed districts, and that in such cases leave to land may be given . . . .[67]

However enlightened, in theory, the provisions for refugees under the 1905 Act may have been, the few reported cases under the Act only concerned the power of the Secretary of State to make an expulsion order against an alien following a Court recommendation after a criminal conviction.[68] They involved aliens who had been resident in Britain for substantial periods of time rather than refugees.[69] Moreover, the workings of the early immigration boards were widely criticised as unsatisfactory on procedural grounds.[70]

Although technically in force until repealed by the Aliens Restriction (Amendment) Act, 1919,[71] the judicial safeguards of the 1905 Act were effectively nullified by the Aliens Restriction Act which was rushed through Parliament in one day on the outbreak of the First World War.[72] The new Act gave to the Home Secretary the widest possible powers over the admission of aliens exercisable by Order in Council.[73] The exigencies of war clearly militated against the continuance of liberal policies for those seeking refuge in Britain. After the War, the Expiring Laws Continuance Acts renewed the 1914 and 1919 Acts year by year and, under the authority of these two statutes, various Aliens Orders were promulgated. The last of such Orders, that of 1953,[74] with amendments, regulated the positions of aliens until its repeal by the Immigration Act, 1971.[75]

Neither the 1953 Order, nor any of the amendments thereto, contained any provision comparable to that in the Aliens Act, 1905, in respect of refugees.

NOTES: CHAPTER I

[1]See generally W. Holdsworth, A History of English Law (1926), vol. 9. pp. 72-104.

[2]R.P.i.135, quoted in Holdsworth, ibid., at p. 76.

[3]7 Anne c.5. "Whereas many strangers of the protestant or reformed religion, out of a due consideration of the happy constitution of the government of this realm, would be induced to transport themselves and their estates to this kingdom, if they might be made partakers of the advantages and privileges which the natural-born subjects thereof do enjoy; be it enacted . . . ."

[4]10 Anne c.5.

[5]See André Réville, "L'abjuratio regni: histoire d'un institution anglaise" (1892), 50 Revue Historique, p. 1.

[6]An Act for Continuing and Reviving of Divers Statutes, and Repealing of Divers Others, 21 Jac. 1, c.28, ss. 6 & 7.

[7]See B. Porter, The Refugee Question in mid-Victorian Politics (1979), Chapter 1.

[8]On December 21, 1792, in the debate on the Alien Bill, the Marquis of Lansdown stated that 8000 such refugees had taken shelter in England: Cobbett's Parliamentary History of England vol.30, c. 147. In his peroration he moved that the King be requested to "[grant] them lands in the western parts of Canada, if it should be judged expedient to preclude them from returning to their native country." Ibid., cc. 151-2.

[9]Alien Act, 1793, 33 Geo. 3, c.4.

[10]Alien Act, 1802, 42 Geo. 3, c.92.

[11]Alien Act, 1814, 54 Geo. 3, c.155.

[12]See H.P.D. (1816) (1st Series), vol. 34, cc.430-479, 617-633. The occasion was the debate prior to the Alien Act, 1816, 56 Geo. 3, c.86.

[13]Alien Act, 1826, 7 Geo. 4, c.54.

[14]6 & 7 Will.4, c.11.

[15]See H.P.D. (1848) (3rd Series), vol. 98, c.264. During the debate on the Aliens Act, 1848, (11 & 12 Vict., c.20) the Government admitted that there were no statistics of the number of aliens in the country nor of those recently arrived.

[16]E.g., Lord Ellenborough C.J., during the debate on the Alien Bill in June, 1816; H.P.D. (1816) (1st Series), vol. 34, c.1069. His contention is described by William Forsyth, Cases and Opinions on Constitutional Law (1869), at p. 181, as "certainly not the law of England."

[17]H.P.D. (1816) (1st Series), vol. 30, c.324. and see C.H.R. Thornbury, "Dr. Soblen and the Alien Law of the United Kingdom," (1963), 12 I.C.L.Q., p. 414.

[18]Aliens Act, 1848, op. cit. This Act was re-enacted for Ireland alone by s.15 of the Prevention of Crime (Ireland) Act, 1882, 45 & 46 Vict., c.25, for a three year period.

[19]Moreover, in the nine years prior to 1825 only seventeen people had been expelled according to figures given to Parliament in 1824 by Peel when moving the continuance of the Aliens Act, 1816, for a two year period. See H.P.D. (1824) (2nd Series), vol. 10, cc.1338-9.

[20]Constitutional History of England (1874), vol. 2, at pp. 283-284. May refers to the years 1571, 1574 and 1575 as occasions on which Elizabeth resorted to the Crown prerogative in order to expel aliens but refugees were not involved. See T.W. Haycraft, "Alien Legislation and the Prerogative of the Crown," (1896), 13 L.Q.R., p. 165 at p. 179.

[21][1891] A.C. 272.

[22]Ibid., at p. 282.

[23]In Poll v. Lord Advocate [1899] 1F. (Ct. of Sess.) 823 in which the master of a foreign ship sought to test the legality of an official's action in preventing him from landing fish at a Scottish port, the same principle was applied.

[24]Attorney-General for Canada v. Cain [1906] A.C. 542, at p. 547.

[25]R. v. Governor of Brixton Prison, Ex parte Soblen [1962] 3 W.L.R. 1154.

[26][1969] 2 Ch. 149.

[27]Ibid., at p. 168.

[28]Ibid., at p. 172.

[29]4 & 5 Geo. 5, c.12. It is worth noting that the prerogative right of the Crown was not reserved in this Act (as it is in the now-controlling Immigration Act, 1971 (see infra, n.31)). If the concept was to be revived, 1914 would have seemed a most appropriate time to do it.

[30]Extradition Act, 1870, 33 & 34 Vict., c.52.

[31]19 & 20 Eliz. 2, c.77 s.33(5).

[32]S. Prakash Sinha, Asylum and International Law (1971), at p. 170.

[33]See Thomas Rymer, Foedera, Conventiones, Literae, Vol. 1, at p. 39, in which there is recited a treaty concluded in 1174 between William of Scotland and Henry II for the delivery of fugitive felons.

[34]See B.D.I.L., vol. 6, p. 444. During the debate on the Extradition Act, 1870, op. cit., it was stated that England had extradition treaties with only three countries whereas France at that time had fifty-three and the United States nearly as many; H.P.D. (1870) (3rd Series), vol. 102, c.301.

[35]See Sinha, Asylum, op. cit., at p. 172.

[36]See H.P.D. (1815) (1st Series), vol. 29, c.1136, when Sir James Mackintosh spoke of the extradition of certain Spanish subjects by the Governor of Gibraltar to the Spanish authorities in Cadiz; (March 1, 1815). See also H.P.D. (1816) (1st Series), vol. 34, c.453, when Lord Castlereagh, for the Government, admitted the principle of non-extraditability for political offences (May 10, 1816). See also, generally, Oppenheim, International Law (1955), vol. 1, pp. 704-7.

[37]Circular Despatch, October 6, 1849. Memorandum. Right of Asylum for Political Refugees. Quoted in B.D.I.L., vol. 6, at p. 44.

[38]H.P.D. (1858) (3rd Series), vol. 148, cc. 1741-1847.

[39]Report of the Select Committee on Extradition of the House of Commons, 1868, c.393. B.S.P. House of Commons, 1867-68, vol. 7, p. 129.

[40]H.P.D. (1876) (3rd Series), vol. 230, c.1801.

[41]Report of Select Committee on Extradition, op. cit., at p. 131.

[42]Extradition Act, 1870, op. cit.

[43]Ibid., s.3(1).

[44]H.P.D. (1870) (3rd Series), vol. 102, c.302.

[45]Ibid., c.305.

[46]1878, c.2039, para. 14.

[47]Extradition Act, 1870, op. cit., s.7(2).

[48]Ibid., s.9(2).

[49]44 & 45 Vict., c.69.

[50]R. v. Governor of Brixton Prison and Another, Ex parte Enahoro [1963] 2 All E.R. 477.

[51]15 & 16 Eliz. 2, c.68.

[52]5 Edw. 7, c.13. This Act finally repealed the Registration of Aliens Act, 1836, op cit.

[53]Aliens Restriction Act, 1914, op. cit.

[54]See L.P. Gartner, The Jewish Immigrant in England, 1870-1914, (1960), Chapters 1 and 2. See also Report of the Royal Commission on Alien Immigration, 1903. B.S.P. House of Commons (1903), vol. 9, pp. 11-12.

[55]Ibid., at p. 29, where a comparison of recent census figures of eleven European countries and the United States showed that, with the exception of Spain and Sweden, Britain had the smallest proportion of aliens in relation to the total population. See also H.P.D. (1905) (4th Series), vol. 141, c.25, where Earl Spencer, in the reply to the King's Speech in the House of Lords, made the same point: February 14, 1905.

[56]Bonar Law gave figures to the House of Commons on April 10, 1905 showing that over the preceding ten years the number of aliens arriving in Britain had increased from 40,422 to 95,708. H.P.D. (4th Series), vol. 144, cc.989-990.

[57]Quoted in Report of the Select Committee on Extradition, op. cit., at p. 13.

[58]In 1894 and 1898. See B.D.I.L., vol. 6, p. 12.

[59]Report of the Royal Commission on Alien Immigration, op. cit.

[60]Aliens Act, 1905, op. cit.

[61]Ibid., s.1(3)(c).

[62]Ibid., s.1(3).

[63]Aliens Bill (No. 187), B.S.P. House of Commons, 1905, vol. 1, p. 59 at p. 62.

[64]H.P.D. (1905) (4th Series), vol. 145, c.696: "What can have been the instructions given to the unfortunate draftsman which led him to put in those words? Take Russia. Russia is the country from which most of the people fly who come here to avoid political and religious persecution. They do not fly from 'prosecutions.'"

[65]Ibid., at c.699. "The other point to which I wish to draw attention is the exclusion of victims of political and religious persecution . . . . The Bill does not touch these victims. There are the religious refugees who are hounded from Russia by fear of mob violence and there are the political refugees - those who are not prosecuted but arrested by Administration Order." See also vol. 132, cc.992, 994 and 995 and vol. 145, cc.743 and 800.

[66]Aliens Act, 1905, op. cit., s.2.

[67]Regulations etc. made by the Secretary of State for the Home Department with regard to the Administration of the Aliens Act, 1905, Cd. 2879 at p. 29 quoted in B.D.I.L., vol. 6, p. 14.

[68]Aliens Act, 1905, op. cit., s.3(1).

[69]See, e.g., R. v. Zausmer (1911) 7 Cr. App. Rep. 41; R. v. Fine (1912) 77 J.P. 79; R. v. Grunspan (1913) 8 Cr. App. Rep. 269; R. v. Friedman (1914) 10 Cr. App. Rep. 72. In all these cases the Court of Criminal Appeal was prepared to quash so much of the sentences as referred to expulsion on the ground that it would work unnecessary and unusual hardship on the prisoner.

[70]See M.J. Landa, The Alien Problem and Its Remedy (1911), Chapter 9.

[71]9 & 10 Geo. 5, c.92.

[72]Aliens Restriction Act, 1914, op. cit.

[73]Ibid., s.1(1). "His Majesty may, at any time when a state of war exists or there is a national emergency, by Order in Council, impose restrictions on aliens."

[74]S.I. No. 1671.

[75]Immigration Act, 1971, op. cit., Schedule 6.

CHAPTER 2

REFUGEES IN THE BRITISH IMMIGRATION PROCESS

Refugees and Judicial Review prior to the Immigration Appeals Act, 1969[1]

In the absence of any municipal law provisions for refugees (except those contained in the Extradition Act, 1870) between 1914 and 1969 (when the Government by the introduction of the Immigration Appeals Act first gave up some of its control over aliens), it becomes necessary to research, by empirical and deductive means, the extent to which the judiciary has been prepared to extend legal protection to them. As has been seen, there had been a sophisticated conceptualization of such characteristics in the Aliens Act, 1905, definition which was broadly analogous to that contained in the 1951 Convention relating to the Status of Refugees.[2] But were the Courts prepared to review the opinion of the executive as to whether or not an alien was a refugee?

In R. v. Home Secretary, Ex parte Duc de Chateau Thierry[3] the Court of Appeal unanimously held that the discretion of the Home Secretary was absolute:

> Assuming, therefore, that the respondent proved that he was a political refugee and unfit for military service, such facts would not affect the validity of the order, but would only be matters to be considered by the Secretary of State as affecting the exercise of his discretion.[4]

However, in R. v. Governor of Brixton Prison, Ex parte Sarno,[5] Low J. implied that the Court would interfere if there was a

> . . . deliberate attempt by the exercise of the powers conferred by the statute and regulations to enforce the return of a real, genuine political refugee to the country of his origin.[6]

Similarly, in R. v. Superintendent of Chiswick Police Station, Ex parte Sacksteder,[7] Pickford L.J. (who two years previously in Chateau Thierry[8] had not been prepared to impugn the Home Secretary's discretion) was prepared to look behind an executive order if

> . . . that order is . . . practically a sham, if the purpose behind it is such as to show that the order is not a genuine or bona fide order, it seems to me the Court can go behind it.[9]

The importance of Sarno and Sacksteder lies in their judicial recognition of two basic and related substantive principles. First, there is no such thing as an "unfettered discretion" and, therefore, judicial review may be appropriate even in the case of aliens. To this very limited extent, there was a step back from the "sovereign rights" approach to aliens that had characterized this area of the common law since Musgrove v. Chung Teeong Toy.[10] Second, cognisance was taken of the crucial factor of non-returnability (non-refoulement). Thus, a way forward was adumbrated whereby, without admitting a right to asylum as such, a minimum protection by judicial review was allowed to refugees in the area traditionally of most concern to them, namely, the return to persecution.

Inevitably, however, the evidentiary burden put upon those seeking successful review of executive orders was, in practice, extremely difficult to discharge and no allegation of improper purpose, on the part of the Home Secretary, was ever upheld. The courts, indeed, even refused to require that deportation proceedings, in general, provide an opportunity for a hearing within the minimum

requirements of natural justice. In R. v. Leman Street Police Station Inspector, Ex parte Venicoff,[11] where the Home Secretary made a deportation order under the Aliens Order, 1919, on the grounds that it was conducive to the public good, it was held that he was not a judicial officer but an executive officer and was, therefore, not bound to hold an enquiry or give persons against whom he proposed to make a deportation order the opportunity of being heard. The maxim audi alteram partem was thus not applicable to aliens. Moreover, the further contention that, if under the Aliens Order the Minister was not bound to hold an enquiry, the article was ultra vires as being contrary to natural justice, also failed for the same reasons. Again, as recently as 1969 in Schmidt v. Secretary of State for Home Affairs,[12] Lord Denning said:

> . . . where a public officer has power to deprive a person of his liberty or his property, the general principle is that it is not to be done without his being given an opportunity of being heard and of making representations on his own behalf. But in the case of aliens, it is rather different: for they have no right to be here except by licence of the Crown.[13]

The unequivocality of Lord Denning's common law "sovereign rights" attitude to aliens becomes even more apparent further on in the same judgment. After citing Ridge v. Baldwin[13a] as authority for the proposition that an administrative body was bound to give a person who is affected by its decision an opportunity of making representations, he continued:

> It all depends on whether he has some right or interest, or, . . . some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say . . . . . .
> . . . . . .
> [A] foreign alien has no right . . . no legitimate expectation . . . of being allowed to stay. He can be refused without reasons given and without a hearing. Once his time has expired, he has to

> go. In point of practice, however, I am glad to say that the Home Secretary does not act arbitrarily. He is always ready to consider any representations that are put before him.[14]

It seems that executive decisions in relation to aliens wishing to enter, or remain, in Britain were not, at that time, subject to judicial control beyond the most fundamental safeguard of having the legality of their detention reviewed on a writ of habeas corpus[15] and a minimum duty on the part of those charged with the responsibility for making such decisions to act fairly (to which reference will be made later.) The question remains as to what Britain's tradition of granting asylum to refugees has amounted since the Second World War.

The 1951 Refugee Convention: Incorporation of International Obligations into Municipal Law

The 1951 Convention Relating to the Status of Refugees[16] was ratified by Britain on March 11, 1954. The Convention was limited in its operation to persons who were made refugees as a result of events occurring in Europe before January 1, 1951, and it leaves to the states parties to decide whether or not to limit it to events occurring before that date in Europe. Britain did not so limit it geographically and, by its accession to the 1967 Protocol relating to the Status of Refugees, the temporal qualification was also removed.[17] The Convention defined a refugee as one who

> . . . owing to well founded fear of being persecuted for reasons of race, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former residence is unable or, owing to such fear, is unwilling to return to it.[18]

The definition was one with which British state practice was familiar and sympathetic both from its historical attitude and, indeed, its own alien legislation in 1905.[19] However, as there has been no British legislation incorporating any of the provisions of the Convention, it is not deemed to be part of municipal law. On the other hand, there having been no statutory provisions enacted which are in conflict with the terms of the Convention (with one possible exception to be noted later) prima facie the Secretary of State would appear bound to exercise his discretion in conformity with them.[20]

Discussion of, and authority for, these last two propositions may be found in the Court of Appeal judgments in R. v. Home Secretary, Ex parte Bhajan Singh[21] and R. v. Chief Immigration Officer, Ex parte Salamat Bibi.[22] The cases turned, in part, on the extent of the applicability in English law of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[23] In Bhajan Singh, Lord Denning inquired as to the position of the Convention under the common law and considered that the Convention should be taken into account by the courts whenever they were interpreting the rights and liberties of an individual. He continued:

> It is to be assumed that the Crown, in taking its part in legislation, would do nothing which was in conflict with treaties. So the court should now construe the Immigration Act 1971 so as to be in conformity with a Convention and not against it . . . . [The] immigration officers and the Secretary of State in exercising their duties ought to bear in mind the principles stated in the Convention. They ought, consciously or subconsciously, to have regard to the principles in it - because, after all, the principles stated in the Convention are only a statement of the principles of fair dealing: and it is their duty to act fairly.

> I would, however, like to correct one sentence in my judgment in Birdi's case. I said that if an Act of Parliament did not conform to the convention, I might be inclined to hold that it was invalid. That was a very tentative statement, but it went too far . . . . [A] treaty does not become part of our English law except and in so far as it is made so by Parliament. If an Act of Parliament contained any provisions contrary to the Convention, the Act of Parliament must prevail.[24]

In the Bibi case, Lord Denning refined somewhat his views on the status of Conventions in municipal law and brought them substantially into line with those of the other two members of the Court.[25] The courts could look to Conventions for help only if there were ambiguities in the statutes or uncertainty in the law. Statutes were to be interpreted on the assumption that Parliament had had regard to international obligations when it legislated. Treaties and Conventions, however, were most certainly not part of the law until expressly made so by Parliament.

Lord Denning also retreated from the position he had taken in Bhajan Singh to the effect that immigration officers should bear in mind Convention principles in exercising their duties:

> I desire, however, to amend one of the statements I made in the Bhajan Singh case. I said then that the immigration officers ought to bear in mind the principles stated in the Convention. I think that would be asking too much of the immigration officers. They cannot be expected to know or to apply the Convention. They must go simply by the immigration rules laid down by the Secretary of State, and not by the Convention . . . . The Convention is drafted in a style very different from the way we are used to in legislation. It contains wide general statements of principle. They are apt to lead to much difficulty in application: because they give rise to much uncertainty. They are not the sort of thing which we can easily digest . . . . So it is much better for us to stick to our own statutes and principles, and only look to the Convention for guidance in case of doubt.[26]

So stands the law on this point and there can be no doubt that the same reasoning may be applied by analogy to the Refugee Convention. Indeed, this has been confirmed at the Immigration Appeal Tribunal level. In The Secretary of State for the Home Department v. "Two Citizens of Chile,"[27] it was stated:

> We would . . . observe that the immigration appellate authority have to decide political asylum appeals upon the basis of the law of England, and particularly in accordance with the Immigration Act 1971 and the Immigration Rules made thereunder. The United Nations Convention and the Universal Declaration of Human Rights cannot so far as the immigration appellate authority are concerned overrule the Immigration Act 1971 and the Rules made thereunder, although they may well be of assistance in indicating the way in which the Act and Rules should be interpreted.[28]

Soblen's Case

Undoubtedly the case most illustrative of the British attitude, both judicial and executive, towards asylum since the ratification of the Refugee Convention was that of Dr. Soblen.[29] Many facets of the refugee dilemma were exposed and discussed in the proceedings. The facts were that Soblen had been convicted in the United States of conspiracy to deliver secret information, had jumped bail there and fled to Israel. There he was expelled for illegal entry and arrived in Britain en route for America escorted by a U.S. marshal. Although admitted for urgent medical treatment, he was refused leave to land and his request for political asylum was refused by the Home Secretary. The Attorney General assured the High Court that the principle (enunciated in the Chateau Thierry case)[30] that the government would not deport those who were entitled to political asylum in Britain

remained true. On the facts, however, the Government did not consider that the claimant was so entitled. Yet the Home Secretary could clearly have mitigated the consequences of the exercise of his discretion by not insisting that the status quo ante be restored to the effect that Soblen should be forcibly continued on his journey directly to the United States.[31] There would seem to be only one reason why an alien should be thus repatriated, having failed to make out a case for asylum to the satisfaction of the governing authorities (who thereby might reasonably be supposed to have dissociated themselves from any interest in his future destination or, indeed, any interest in him at all). That reason is that the state of refoulement is a friendly one with whom good political relations are valued. This was clearly the situation in the Soblen affair. The wholly subjective nature of the executive discretion was impliedly approved by Donovan L.J. when he stated:

> . . . if country A is an ally of country B, each of them may well think it conducive to the public good of their own citizens that they should cooperate to see that a national of one of them who gives defence information to a common potential enemy, should not escape the consequences inflicted upon him by due process of law.[32]

The onward destination is of vital importance to those refused asylum. In Chateau Thierry,[33] it was held that the Minister had no power to specify in a deportation order to what country an alien (in that case claiming asylum) should be sent, although he might accomplish his aim indirectly by issuing a valid order placing the alien on a designated ship.[34] The result in that case was a disguised extradition enabling the Government to achieve indirectly that which it could not do directly, namely, extradite a political refugee without

a hearing as to the merits as provided for by the Extradition Act, 1870.[35] It might be considered that this result would have justified the Court of Appeal looking behind the deportation order to see if it was not in fact "practically a sham . . . not a genuine or bona fide order."[36] As has been noted, judicial review to this limited extent had been acknowledged in Sacksteder.[37]

This factor of "disguised extradition" was the second and most significant ground of challenge to the deportation order, as Soblen claimed that the order was being used to legitimize an illegitimate act - extradition for a non-extraditable offence. Again, a nod was made in the direction of judicial review when Lord Denning said:

> . . . it depends on the purpose with which the act is done. If it was done for an authorised purpose it was lawful. If it was done professedly for an authorised purpose, but in fact for a different purpose with an ulterior object, it was unlawful. If, therefore, the purpose of the Home Secretary in this case was to surrender the applicant as a fugitive criminal to the United States of America because they had asked for him, then it would be unlawful. But if the Home Secretary's purpose was to deport him to his own country because the Home Secretary considered his presence here to be not conducive to the public good, then the Home Secretary's action is lawful. It is open to these courts to inquire whether the purpose of the Home Secretary was a lawful or an unlawful purpose. Was there a misuse of the power or not? The courts can always go behind the face of the deportation order in order to see whether the powers entrusted by Parliament have been exercised lawfully or not.[38]

The challenge was unsuccessful. As the reasons for the Minister's decision were cloaked by a claim of Crown privilege, it was impossible to identify their position within the overlapping areas of deportation and extradition and so deduce mala fides on the part of the Minister sufficient to overturn his order.

The third challenge, equally unsuccessful, was that the applicant had not been given an opportunity to make representations to the Minister on the issue whether it was to the public good that he should be deported. Did not the principle of natural justice found in the maxim audi alteram partem apply? The Court of Appeal unanimously approved the decision in Venicoff's case[39] that the principle did not apply to those in Soblen's position as "[the] power vested in the Home Secretary to order deportation is a power to do an executive or administrative and not a judicial act,"[40] although the possibility was left open that, in some circumstances, an alien might be entitled to be heard after an order had been made but before its execution.[41]

The fourth challenge by Soblen was on the technical ground that an alien refused leave to land could not, thereafter, be deported under the then-existing Aliens Order. This too was rejected by the Court which held that the provisions for removal of one refused permission to land and those for deportation of an alien already admitted were "cumulative and complementary," rather than mutually exclusive. This, as one writer has noted,

> . . . clouds the distinction between exclusion and deportation proceedings which even today may have significant consequences for the individual, for the alien who has been admitted benefits fully from the right of appeal against removal and against destination. If, however, it emerges that he was never given leave to land, then he may be removed summarily and without any trial on the merits . . . . The alien is then once again left to his common law remedy of habeas corpus.[42]

It is not only the last-mentioned aspect of the Soblen case that is of continuing relevance. Both the "disguised extradition"

problem and the question of the extent to which natural justice may be invoked by aliens qua refugees (with which that problem is linked) are relevant today because of the particular form that the immigration appeal procedure has taken since the introduction of the Immigration Appeals Act, 1969.[43]

Refugees: Policy versus Justiciability

Following recommendations by the Wilson Committee,[44] appellate bodies were established by the Immigration Appeals Act, 1969. Introducing the Bill, the Home Secretary stated:

> The present position as the law stands is that the Home Secretary has the power to keep any alien out of the country . . . . Under the proposed system, the final responsibility in the generality of cases will no longer rest with me. If an immigrant wishes to dispute a decision, his proper remedy under the Bill will be to exercise his right of appeal under the system which the Bill lays down . . . . Certainly the Bill marks an important extension of the rule of law in this country . . . . Having mentioned the power which I shall lose under the Bill, I should make clear what powers I shall retain. First . . . the Home Office will remain responsible for determining the policy to be applied in the administration of immigration control. That policy is expressed in the form of "immigration rules", which will be laid before Parliament and published . . . . Under the appeals system, these immigration rules will be binding on the appellate authorities and, within the limits allowed by law, I shall be free to alter them from time to time as, in my view, the public interest may require. I shall of course be answerable to Parliament for so doing or equally answerable for not altering them.[45]

He went on to state that, in accordance with the recommendation of the Wilson Committee,[46] leave to appeal was to be granted in any case in which the appellant was making a bona fide claim to political asylum.[47] As one commentator wrote:

> The Act provides a textbook example as to how Parliament has drawn the line between "justiciable issues" and "policy."[48]

The demarcation of this line, it is submitted, is the crucial factor in determining if, and to what extent, a state is committing itself to its international obligations in the refugee context. Such demarcation may be identified by reference to the terms of current legislation and rules made pursuant thereto. However, the significance of the demarcation is itself dependent both on the stage of development of the administrative law of a particular state and on the nature and quality of its Parliamentary and political processes. Clearly, the broad question of admission of aliens qua aliens is a matter of vital public policy best left to Parliament rather than the courts. On the other hand, in the area of admission of aliens qua refugees a state is obliged to operate on a case to case basis within parameters laid down by the international community, in the present context, the 1951 Refugee Convention to which Britain is a party. The ministerial ipse dixit philosophy, which prevailed until 1969 as regards aliens, was obviously unsatisfactory; a fortiori was this so in the case of refugees, bearing in mind the marked reluctance of the courts to extend to non-citizens the principles of procedural protection and fair play enjoyed by citizens.

Yet the mere cession of ministerial authority to "appellate authorities" (as so described in the Home Secretary's address to Parliament)[49] is only an improvement dependent on the terms and conditions on which such authority is ceded. It is, of course, true that before 1963 and the ruling of the House of Lords in Ridge v. Baldwin,[50] there were very serious deficiencies in the British judicial attitude towards reviewability of tribunal decisions. At the

present time, however, it is the British Parliamentary processes that are the focus of attention and concern. Cabinet control of Parliament is widely considered to be stronger now than ever before. The expression "ministerial authority" employed above is used advisedly rather than the term "responsibility" which is favoured by Government Ministers. But, by virtue of the appellate procedure introduced by the Immigration Appeals Act, 1969[51] (for the most part retained in the current Immigration Act, 1971),[52] and the immigration rules laid before Parliament by the Home Secretary, British refugee-related provisions lie in this hazily defined borderline area between executive and judicial control.

The case of Rudi Dutschke is illustrative of the difficulties posed by the British Government's worthy attempt to construct an arena within which policy could cooperate with justiciability.[53] Although Dutschke was not claiming refugee status, the case is relevant by reason of its focussing on the most extreme point of friction between policy and justiciability - the issue of aliens and national security. If political considerations can accommodate judicial ones at this level, then a fortiori refugees viewed as aliens having a special and privileged status will be adequately served by such a politico-judicial scheme as was set up by the Immigration Appeals Act, 1969, to deal with national security cases. But it seems that an accommodation at this level cannot be made in Britain. On the issue of national security, Article 32 of the 1951 Refugee Convention states:

> 1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

> 2. The expulsion of such a refugee shall be only a pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented before a competent authority or a person or persons specially designated by the competent authority.

When the Wilson Committee addressed itself to the issue of national security, it considered that

> . . . there is no need to exlude a case from the appeal system merely because the decision in question was taken on security grounds . . . . The hearings would presumably have to be in camera, but there would be no question of withholding from the appellant particulars of what is alleged against him.[54]

However, section 9(2) of the Immigration Appeals Act, 1969, empowered the Secretary of State to direct that an appeal be heard by a specially constituted panel of the Tribunal's members. In the normal course of events, an adjudicator was the first appellate authority from an immigration officer's decision. Further, section 9(3) ensured that this was not to be an appeal, as that word is generally understood, for evidence could be presented by the Government in the absence of the appellant and his advisers and the Tribunal's decision was not to be binding on the Minister. In other words, the Labour Government of the day, against the advice of the Wilson Committee,[55] decided to treat political issues as justiciable but at the same time leaving the Minister with the power of final decision.

The facts of the Dutschke case were that this West German citizen, one of the leaders of the Student Socialist Movement in the nineteen sixties, had been given leave to enter Britain for medical treatment. He was given extensions to stay until, with the change of Government in 1970, further leave to remain was refused. On appeal,

the specially constituted panel of the Immigration Appeal Tribunal upheld the decision on the ground that the appellant was likely to be a security risk in the future. In so far as they are known, the arguments advanced by the Government show that the decision required the exercise of political judgment; this it received and the justiciable element was colourable. The principles of natural justice clearly could find no place in the context of a unilateral hearing where the appellant was not able to know the facts of the case he had to meet. In truth, it may as well be admitted that matters of national security are not justiciable. Governments will, inevitably and legitimately, deem the political elements of such matters as more important than the justiciable ones. If the Government was not prepared to contain political considerations within judicial standards in the way that the Wilson Committee had suggested, it was correct for it to recognize as much in the Immigration Act, 1971, and abandon any formal procedure in security cases. Pragmatism of this kind does not put a state in breach of the Refugee Convention and has the advantage of leaving a Tribunal free to discharge its duties justiciably in less sensitive areas. Now, under the Immigration Act, 1971, a decision taken to terminate the leave of a person to remain in this country, or to deport him, is unappealable where the ground is that this would be conducive to the public good (whether by reason of national security considerations or of international relations or other reasons of a political nature).[56] But, by administrative concession,[57] such a person is entitled to have his case referred on an extra-statutory basis to three advisers whose advice to the Home Secretary will not be

disclosed nor binding on him.[58] It is doubtful whether any other course is practical, given the prevalent governmental attitude to national security requirements.[59]

The Immigration Appeals Act, 1969

The improvements in general immigration procedure that were introduced by the 1969 Act were substantial and significant, notwithstanding the fact that they were erected on an archaic framework of alien legislation.[60]

Commonwealth citizens who, since the Commonwealth Immigrants Act, 1962,[61] had not been able to enter Britain as of right, were given rights of appeal against exclusion, conditions of admission, deportation orders and directions for removal. The right was exercisable, in the first instance, by appealing from an immigration officer's decision to an adjudicator appointed by the Home Office.[62] His determination was subject to review by an Immigration Appeal Tribunal set up under the Act.[63] Its members were to be appointed by the Lord Chancellor and headed by a legally qualified person.[64] In addition, aliens were, for the first time since 1914, to be given limited rights of appeal by Order in Council[65] and one such was promulgated the following year bringing them within the terms of the Act applicable to Commonwealth citizens.[66]

In as much as the basic features of this appeal system were retained in the Immigration Act, 1971 (though with some retreats and modifications), identification of refugee-related issues interspersed throughout the 1969 Act may be postponed to consideration of the 1971

Act. However, at this point, a fundamental innovative feature of the 1969 Act should be alluded to: namely, that by its terms, Ministers no longer answered to Parliament in respect of individual cases, other than those concerning matters of national security. Decisions were appealable if the adjudicator considered

> i that the decision or action against which the appeal is brought was not in accordance with the law or any immigration rules applicable to the case; or
>
> ii where the decision or action involved the exercise of a discretion by the Secretary of State or an officer, that the discretion should have been exercised differently.[67]

Thus, the controllable nature of the executive discretion was accepted and recognition given to the requirements of due process (due in no small measure to pressure arising from Britain's ratification of the European Convention on Human Rights).[68] This vitally important section is repeated in the 1971 Act.[69]

The Immigration Act, 1971

The primary characteristic of the 1971 Act which came into effect on January 1, 1973, is to make a distinction between those persons who have the right of abode in Britain (patrials) and those who do not and need leave to enter (non-patrials).[70] Non-patrials may include citizens of the Republic of Ireland and nationals of the European Economic Community as well as aliens. The precise regulation and conditions of entry and stay of non-patrials in Britain, however, is governed by rules laid down in Parliament, from time to time, by the Secretary of State. As Lord Widgery C.J. has said:

> Anyone who is familiar with this Act will realize that it is of a somewhat unusual structure. It is obviously intended to deal with many thousands of different situations which cannot all be governed precisely by any form of legislation, and so the idea has been adopted of having the Act in almost framework form and giving the Secretary of State power to issue rules and policy directions and the like which are to be taken into account in the administration of the Act.[71]

The appellate system is very complex, as is the Act as a whole. It retains the basic features set up under the Immigration Appeals Act, 1969, of appeals against discretionary administrative decisions to adjudicators and thence to the Immigration Appeal Tribunal. The Act makes no reference whatsoever to refugees, as such. Such provision as there is for refugees is to be found only in immigration rules which the Act empowers the Secretary of State to make.[72] The status of such rules will be discussed later. The Act does, however, guarantee refugee claimants access to the appellate authorities in various other capacities.

There is a right of appeal to an adjudicator given to those requiring leave to enter or against refusal of such leave.[73] (However, unlike under the Immigration Appeals Act, 1969, no appeal lies against decisions to exclude a non-patrial if the Secretary of State personally certifies that the decision was taken in accordance with his direction, on the ground that exclusion is conducive to the public good.[74]) There is a right of appeal to an adjudicator where there is an objection as to destination on the part of a person who has been refused leave to enter, or who is the subject of a deportation order, or who has entered the United Kingdom in breach of such an order.[75] But, such an appeal will only be successful if there are

compelling reasons to depart from the normal repatriation arrangements and the appellant can produce evidence that another country of his choice will receive him.[76] There is, too, a right of appeal against deportation orders directly to the Immigration Appeal Tribunal at first instance, where the ground of the decision is that deportation is conducive to the public good.[77] Anomalously, therefore, a refugee claimant, who is the subject of a deportation order because of suspected criminal activities, has an appellate right, whereas one facing deportation for political activities does not.[78] Finally, illegal entrants may appeal to an adjudicator but only on the ground that the Home Secretary has made a factual error.[79] In fact, as one commentator has noted,[80] this right is "limited and virtually useless" in that, by section 16(2), the appellant must first leave the country before he can appeal. Further, the fact that the criminal sanctions laid down in the Act make no allowance for refugees who are illegal entrants seems to be incompatible with the United Kingdom's obligations under Article 31 of the 1951 Refugee Convention, which provides that penalties should not be imposed on Convention refugees illegally in a country, provided that they present themselves without delay to the authorities.

These, then, are the provisions having the force of law by which a person, whether refugee claimant or not, may move himself out of range of the discretion of the immigration officer or Secretary of State and into the quasi-judicial (at least) process presided over by impartial adjudicators appointed by the Government.[81] In addition, there is a right of appeal from an adjudicator's decision to

the judicial forum provided by the Immigration Appeal Tribunal. But this right shares the precarious nature of the genuine refugee provisions made pursuant to the statute as it is subject to any requirement of rules of procedure.[82] Although the current rules of procedure[83] provide that the Tribunal is obliged, on application, to grant leave to appeal where an adjudicator has dismissed an appeal by a person whom the Tribunal is satisfied is a Convention refugee,[84] it will be apparent that the rules may be altered, with speed and ease, by the government of the day to suit its purposes. This is so, whatever the jural status of such immigration rules is found to be. It marks the most substantial distinction between the British and Canadian governmental posture towards refugees. The Canadian Government incorporated specific and complex refugee provisions throughout the Immigration Act, 1976,[85] and is, therefore, open to difficulty and possible political embarrassment if it wishes to change them. In this context, the importance of section 19(1)(a) of the British Act may be appreciated since it obliges the adjudicator to allow appeals where he considers that the discretion of the Secretary of State or an immigration officer should have been exercised differently. Discretion is thus reviewable on the merits of the case. This is a major concession by the Government to the concept of judicial review of administrative power.[86]

Since the refugee claimant in Britain is only guaranteed access to a statutory impartial decision-maker - the adjudicator - in his capacity as a non-patrial on the terms outlined above, it is necessary

to examine the legal status of the mechanism wherein refugee provisions are contained: the immigration rules.

The Immigration Rules[87] and the Fairness Question

The Secretary of State has power under Part I of the Act, dealing with the regulation of entry into and stay in Britain of non-patrials, to

> . . . lay before Parliament statement of the rules . . . laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter . . . .[88]

In addition, under Part II of the Act, dealing with appeals, the Secretary of State may make rules of procedure which

> . . . shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.[89]

The rules governing control, on and after entry, state:

> Where a person is a refugee full account is to be taken of the provisions of the relevant international agreements to which the United Kingdom is a party.[90]

There is no definition of a refugee in the rules.[91] However, under the rubric "political asylum," which is found both in relation to the variations of leave to enter or remain and deportation, the standard definition found in Article 1 of the 1951 Refugee Convention is employed.[92] Similarly, as has been noted, in the Immigration Appeals (Procedure) Rules 1972,[93] appeal from an adjudicator's decision to the Tribunal is allowed as of right

> . . . if [the Tribunal] is satisfied that the country or territory to which he is to be removed is one to which he is unwilling to go

> owing to the fear of being persecuted there for reasons of race, religion, nationality, membership of a particular social group or political opinion.[94]

The immigration rules relating to control on and after entry, which are required by the Act to be laid before Parliament,[95] are subject to the negative resolution procedure whereby any member may move a prayer to annul the statement within forty days of it being laid. Motions to annul statements are infrequent and even more infrequently successful.[96] The effect of this negative resolution procedure has been stated by the Court of appeal to be that

> . . . if Parliament disapproves of the rules they are not thereby abrogated; it merely becomes necessary for the Secretary of State to devise such fresh rules as appear to him to be required in the circumstances.[97]

Similarly, as the Immigration Appeals (Procedure) Rules are stated to be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament,[98] such nomenclature brings them within the ambit of the Statutory Instruments Act, 1946,[99] so that they too become operative on precisely the same terms.[100] Thus, both sets of Rules may be changed by the Government of the day without great difficulty and, in practice, without much Parliamentary control.[101] As one writer has commented:

> . . . no rights or guarantees of admission set out in the rules have anything like the force or permanence of statutory rights,[102]

and the Immigration Appeal Tribunal has succinctly described the situation it finds itself in as follows:

> . . . the immigration appellate authority have to decide political asylum appeals upon the basis of the law of England, and particularly in accordance with the Immigration Act 1971 and the

> Immigration Rules made thereunder. The United Nations Convention and the Declaration of Human Rights cannot so far as the immigration appellate authority are concerned overrule the Immigration Act 1971 and the Rules made thereunder, although they may well be of assistance in indicating the way in which the Act and Rules should be interpreted.[103]

The British Government, then, has utilized the medium of administrative rules in preference to full statutory sanction to fulfil its obligations to refugees; indeed a sophisticated attempt to solve a problem of *public affairs that is considered* problematical, if not inflammatory, in a country which unashamedly operates a "closed door" immigration policy. Its effectiveness, however, in drawing a line between policy and justiciability has to be determined by reference to the judicial attitude to the (prima facie) delegated legislation that the immigration officers are required to apply. Superficially, at least, there would seem to be more space available for judicial manoeuvering here than in the "national security" context where, as has been seen, the judiciary was not inclined to question state policy by the traditional methods of judicial review.

For an understanding of current judicial thinking, it is well to recall the common law attitude in aliens-related matters. It has been demonstrated that this attitude has been one of deference to executive discretion since the late nineteenth century. In 1891, in Musgrove v. Chung Teeong Toy,[104] the Privy Council was of the opinion that an alien had no right enforceable by action to enter the country and this had been followed by restrictive legislation in 1905 and 1914,[105] restrictively interpreted by the courts. A chain of cases had emphasized the wide parameters within which government

officials were allowed to exercise their discretion.[106] Although, as Professor Dworkin has said, "discretion, like the hole in a doughnut, does not exist except as an area left open by a surrounding belt of restriction,"[107] that belt had been determined to be loose indeed in those cases with the restrictions amounting to no more than a requirement of bona fides on the part of the decision-maker. It will be seen that the re-introduction of the concept of fairness in administrative law has allowed more flexibility to the judiciary in reviewing administrative action. It is also true, however, that such flexibility is necessarily dependent on the type of statutory discretion at issue. The fundamental is that the courts remain the ultimate arbiters of the meaning and purpose of legislation. Lord Reid's judgment in Padfield v. Minister of Agriculture, Fisheries and Food[108] is apposite:

> Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.[109]

This, then, being the judicial approach to administrative discretion, there is no surprise occasioned by the conservative attitude taken by British courts to aliens' claims to the rules of natural justice, such as those argued in Ex parte Soblen[110] and Schmidt v. Secretary of State for Home Affairs[111] under restrictive immigration legislation. To invert Professor Dworkin's analogy, it may be stated that if

immigraton legislation fills the hole in the doughnut wherein judicial review is countenanced only according to the terms of the statute, then the surrounding "belt" consists of executive power constrained only by the general principles of review of such power. These have been described as comprising the duty to act bona fide, uninfluenced by irrelevant considerations and not arbitrarily or illegally;[112] until 1967 and the High Court judgments in Re H.K. (An Infant),[113] they marked the only limitations to administrative discretion. Without a recognition of such limits, it is clear that the courts would be admitting that discretion in certain cases is unreviewable, putting the executive beyond their reach. Recognition of them and the duties predicated by them, on the other hand, acknowledges that there is a correlative right attaching to the subjects of administrative power; the crux of the problem is defining at what point such rights have been violated so as to justify judicial interference. It is the lacuna between the position of these minimum duties relating to the abuse of discretion and the point at which the traditional rules of natural justice are applied that the concept of fairness attempts to fill in solution of this problem.

In view of the fact that the concept of acting fairly was adumbrated in at least three cases in the distant past,[114] it is surprising that it has only resurfaced in the last twenty-five years and belies the often quoted dictum of Lord Tucker in Russell v. Duke of Norfolk[115] that

> [the] requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth.116

Lord Tucker envisaged "natural justice" as involving flexibility in order to live up to its natural, semantic significance. But such flexibility, allowing natural jutice to be fleshed out so as to provide an umbrella under which the courts would be able to intervene over the spectrum of statutory and non-statutory decision-making, fell foul of the conceptual problems posed by the requirement of characterizing functions as judicial, quasi-judicial or administrative. The result was that an a priori evaluation of the status of the decision-maker and the regime under which he operated became the criteria for the application of natural justice principles rather than the manner and result of the exercise of such power. As is well-known, this conceptual log-jam was broken by the House of Lords decision in Ridge v. Baldwin.[117] Professor Wade in a lecture summarized the essence of this decision to be that

> [the] principles of natural justice apply just as much to action which is purely administrative as to action which may be characterized as judicial or quasi-judicial. What counts is not any subtle analytical distinction, but the simple fact that power is being exercised over somebody to his detriment . . . . The duty to act judicially simply means the duty to give a fair hearing, and this is required merely by the rules of fair play when governmental power is exercised against particular individuals so as to affect their rights or interests or liberties.[118]

If this statement is correct, the first in the modern chain of English "fairness" cases is based on a false premise. In Re H.K. (An Infant),[119] the issue was whether an immigration officer had a duty to give an immigrant a fair chance of allaying doubts about his age. It was held that, even if such an officer was not acting in a judicial or quasi-judicial capacity, the rules of natural justice applied to the limited extent allowed by the circumstances of any

particular case and within the framework under which he was working. Lord Parker C.J. stated:

> That is not . . . a question of acting or being required to act judicially, but of being required to act fairly. Good administration and an honest bona fide decision must . . . require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly.[120]

The false premise lay in drawing the distinction between the duty to act judicially and the duty to act fairly. In fact, Ridge v. Baldwin was not alluded to at all by any of the judges in Re H.K. (An Infant).[121] Nevertheless, since then, British jurisprudence has evolved to the point where the effect of the re-introduction of the concept of fairness has been to give sufficient elasticity to the duty to act judicially so as to bring with it procedural requirements varying with the circumstances of the case at issue. Fortified by the reasoning in Ridge v. Baldwin, the Court of Appeal has, on several occasions, rejected functional categorization as the sine qua non for judicial review.[122] Categorization now plays the subsidiary role of focussing judicial attention on what (if any) procedural requirements are to be included within the duty to act fairly. This continuum conceptualization, whereby natural justice and fairness mesh together and overlap at an indeterminate and, therefore, unpredictable point, is clearly seen in a line of cases since 1967. In those cases, the different terms have been used interchangeably by different judges who, nevertheless, agreed on the extent of the procedural duties cast on decision-makers by the concepts.[123] It is also seen in cases decided under the Commonwealth Immigrants Act, 1962, and the Immigration Act, 1971, where the Divisional Court and the court of Appeal have

been of the opinion that they could assume jurisdiction to grant relief by way of the prerogative writs if there is a question of immigration officers having acted unfairly.[124] Reference to such remedial factors is perhaps the clearest evidence of synonymity being given to the concepts of "acting judicially" and "acting fairly."

The significance of the re-birth of the fairness duty, however, is of less significance for refugee claimants in the United Kingdom than for those in Canada. The claimant in the former puts his case before the immigration officer, who has power to reach a conclusion on the facts which is then appealable to an adjudicator by section 19(1) of the Immigration Act, 1971. In Canada, on the other hand, it will be seen that it is considerably more difficult for a claimant to put his case before an official with the authority to make a decision. Nevertheless, because of the traditional British judicial reluctance to interfere with executive discretion as regards the admission of aliens, it is of interest to examine whether the mere departure from the rules by an immigration officer would, of itself, amount to unfairness sufficient to invoke jurisdiction for an order of certiorari or mandamus so as to quash the order and oblige him to observe the rules.

In R. v. Criminal Injuries Compensation Board, Ex parte Lain,[125] the principle was established that certiorari would operate to quash decisions of the Criminal Injuries Compensation Board. This was despite the fact that the Board operated under mere administrative instructions from the Home Secretary to the Board made under no statutory authority. It might reasonably have been supposed that the Home Secretary's rules in the immigration field would be considered

a fortiori as meriting similar judicial treatment in a proper case. They are, after all, required to be laid before Parliament and published, and these facts seem to indicate an intention that the public be entitled to rely on them. Roskill L.J. certainly appeared to think so; in R. v. Chief Immigration Officer (Heathrow Airport), Ex parte Salamat Bibi,[126] he said:

> These rules are just as much delegated legislation as any other form of rule-making activity or delegated legislation which is empowered by Act of Parliament. Furthermore these rules are subject to a negative resolution . . . and it is unheard of that something which is no more than an administrative circular stating what the Home Office conceives to be good administrative practice should be subject to a negative resolution from both Houses of Parliament. These rules to my mind are just as much a part of the law of England as the Act itself.[127]

However, a year later, the Court of Appeal declined to apply the analogy of the criminal injuries compensation cases. In so doing, it went some way to re-establishing a clear line between legislative and administrative rules. In R. v. Secretary of State for Home Affairs, Ex parte Hosenball,[128] Lord Denning said:

> They are not rules of law. They are rules of practice laid down for the guidance of immigration officers and tribunals who are entrusted with the aministration of this Act. They can be, and often are, prayed in aid by applicants before the courts in immigration cases. To some extent the courts must have regard to them because there are provisions in the Act itself, particularly in s.19, which show that in appeals to an adjudicator, if the immigration rules have not been complied with, then the appeal is to be allowed. In addition, the courts always have regard to these rules, not only in matters where there is a right of appeal but also in cases under prerogative writs where there is a question whether the officers have acted fairly. But they are not rules in the nature of delegated legislation so as to amount to strict rules of law.[129]

As a result of this important clarification on the nature of the Immigration Rules, it appears that a breach of them is not by

itself a ground for the quashing of an order of the Home Secretary, nor will mandamus be granted to make him observe them. However, as Lord Denning noted,[130] an adjudicator by section 19(1)(a)(i) of the Act shall allow an appeal if he considers

> . . . that the decision or action against which the appeal is brought was not in accordance with the law or with any immigration rules applicable to the case.

Thus, it has been ruled that "so far as an adjudicator is concerned at least, the rules have the force of law,"[131] and an order for certiorari would be granted if an adjudicator were not to allow an appeal in such circumstances, as he would be erring in law.

The question remains as to precisely why the High Court assumed jurisdiction to quash decisions of the Criminal Injuries Compensation Board in Ex parte Lain, which did not accord with the published rules of an extra-statutory scheme, whereas the Court of Appeal in Hosenball was not prepared to do so in the case of the immigration rules. In Ex parte Lain fairness was not an issue and a distinction was drawn between the judicial function of the Board (determining whether a particular applicant should be offered any money payment) and the administrative one (making payments to applicants in accordance with such determinations). As Lord Diplock said:

> [The] mere fact that the ultimate result to which an administrative process leads is left to the discretion of the executive government does not prevent an earlier stage in the process from being quasi-judicial in character.[132]

It is at least arguable that, by analogy, an immigration officer performs a similar quasi-judicial function by determining, in accordance with specified principles (contained in the immigration

rules), whether a refugee should be offered asylum and an administrative function when he gives leave to enter the country. In Hosenball, however, the court of Appeal did not draw this analogy and implicitly viewed the entire process before the immigration officer as administrative. The result is tautologous. An immigration officer or Minister will not be held to be unfair merely because he departs from the procedure set out in the rules, but the rules will be looked to in cases where there is a question whether they have acted fairly. In this context, fairness has to mean no more than the time-honoured duty of honesty and good faith on the part of the decision-maker. Only twice in eight immigration cases since 1967, in which fairness was alluded to,[133] has it been suggested that fairness, in relation to aliens, involved the procedural content of a fair hearing beyond that substantive duty of acting in good faith. On those two occasions, it was considered that the procedural content should only be imported where rights were involved rather than privileges. In Re H.K. (An Infant),[134] Lord Parker was of the view that the applicant was entitled to a fair hearing as to his age as (at that time) he would have had a right to be admitted if he were under the age of sixteen. In Schmidt,[135] Lord Denning was of the view that an alien should be similarly entitled if a permit was revoked before the expiration of the time limit imposed as, in such a case, he would have a "legitimate expectation" of being allowed to stay.[136] Apart from such cases where "rights" or "legitimate expectations" can be invoked, it was emphasized in Schmidt that the applicant's status militated against his being afforded any procedural protection whatsoever. Similarly, in

R. v. Governor of Pentonville Prison, Ex parte Azam,[137] it was said of an alien that "he has no right to be here. He can be removed without reasons given and without a hearing."[138]

The same barrier has been put up where privileges not associated with alien status are involved. In R. v. Gaming Board, Ex parte Benaim and Khaida,[139] where application was made for a licence to run Crockford's, the gaming club, it was held by the Court of Appeal that a privilege was being sought and not a right pursuant to which the applicants were entitled to have disclosed to them the matters troubling the Board and be given an opportunity to rebut them. Again, in Breen v. Amalgamated Engineering Union,[140] this position was adopted in relation to someone seeking the privilege of being appointed to a post. It appears that, for remedial purposes, procedural fairness is still constrained by Lord Atkin's famous judgment to the effect that the prerogative writs are only invokable where "the rights of subjects" are involved and there is a "duty to act judicially."[141] On the other hand, in Ex parte Lain, the Court of Appeal took a more relaxed view of Lord Atkin's dictum. Lord Parker said it was not "intended to be an exhaustive definition"[142] and Lord Ashworth C.J. considered that the words "would be of no less value if they were altered by omitting 'the rights of' so as to become 'affecting subjects'."[143] The duty to act judicially was the paramount consideration in relation to relief by way of certiorari. It is the appendices of this duty which have been extended by the development of the concept of fairness in British jurisprudence. However, it seems that this, by itself, will not be of great assistance to aliens nor change the judicial attitude

towards them. Even if the "rights-privileges" dichotomy loses its potency, they remain aliens and not "subjects" and even if that requirement is subsumed in importance to the duty to act judicially or fairly, that results in no more than a willingness to investigate the honesty and good faith of the executive, the so-called duty of substantive fairness. It has been demonstrated that the recognition of this minimum duty is by no means a novelty. For procedural fairness, aliens, whether refugees or not, have cause to be grateful to the legislature. It has been more generous than the judiciary.

NOTES: CHAPTER 2

[1]17 & 18 Eliz. 2, c.21.

[2]189 U.N.T.S. 150.

[3](1917)116 L.T.R. 226.

[4]Ibid., at p. 235, per Pickford L.J.

[5][1916] 2 K.B. 742.

[6]Ibid., at p. 752.

[7][1918] 1 K.B. 578.

[8]Chateau Thierry, op. cit.

[9]Sacksteder, op. cit. at p. 586-587. See also R. v. Governor of Brixton Prison, Ex parte Bloom (1920) 124 L.T.R. 375, at p. 378: "We have no right to sit in appeal from the Home Secretary when he has used the executive powers conferred upon him, provided that he has used them in a lawful way in accordance with the Act." per Lord Reading C.J.

[10][1891] A.C. 272.

[11][1920] 3 K.B. 72.

[12][1969] 2 Ch. 149.

[13]Ibid., at p. 170. The case was heard before the Immigration Appeals Act, 1969, came into effect. See also J. Hopkins, "Entry to United Kingdom of Alien-Natural Justice" (1970), 28 C.L.J. p. 9.

[13a][1964] A.C. 40.

[14]Ibid., at p. 170-171. Lord Denning continued: "We know too that Sir Roy Wilson and his colleagues have recommended a system of appeals against exclusion of aliens. This may soon become law. But it is not so yet."

[15]In R. v. Governor of Brixton Prison, Ex parte Soblen [1962] 3 W.L.R. 1154, at p. 1175 Stephenson J. said: "I find nothing . . . which compels me to hold that an alien . . . is shut out from trying to win his freedom by the right, denied to few hitherto, of applying for the historic safeguard of a writ of habeas corpus." On appeal, this was specifically affirmed by Lord Denning M.R. Ibid., at p. 1176.

[16]189 U.N.T.S. 150.

[17]606 U.N.T.S. 267. The United Kingdom's instrument of accession was deposited on September 4, 1968: Cmnd. 3906.

[18]Article 1 A (2) as amended by article 1 (2) of the 1967 Protocol, op. cit.

[19]The Government has reiterated its adherence to such a definition on numerous occasions in Parliament since ratification of the convention in 1954. See H.P.D. (5th series) vol. 529, c.1508 (July 1, 1954); vol. 566, cc.715-769 (March 8, 1957); vol. 583, cc.1422-23 (March 6, 1958); vol. 668, c.429 (November 28, 1962); vol. 807, cc.187-8 (November 26, 1970). On this later occasion the Convention definition was given verbatim in a Written Answer as the basis of the policy of Her Majesty's Government. See also E. Lauterpacht, "The Contemporary Practice of the United Kingdom in the Field of International Law - Survey and Comment VI" (1958), 7 I.C.L.Q., 514, at pp. 553-555.

[20]See Atle Grahl-Madsen, The Status of Refugees in International Law (1972), vol. 2, p. 127 and see generally F. Morgenstern, "The Right of Asylum" (1949), 26 B.Y.I.L., p. 327.

[21][1976] Q.B. 198.

[22][1976] 1 W.L.R. 979. See also Pan-American World Airways Inc. v. Department of Trade (1976) 1 Lloyd's Rep. 25.

[23]5 E.T.S.; 213 U.N.T.S. 221.

[24]Bhajan Singh, op. cit., at p. 207.

[25]Bibi, op. cit., i.e., Roskill L.J. and Geoffrey Lane L.J.

[26]Ibid., at pp. 984-85.

[27][1977] Imm. A.R. 36.

[28]Ibid., at p. 42 per curiam.

[29]R. v. Secretary of State for Home Affairs, Ex parte Soblen [1962] 3 W.L.R. 1145; R. v. Governor of Brixton Prison, Ex parte Soblen [1962] 3 W.L.R. 1154.

[30]Chateau Thierry, op. cit., at p. 929. per Swinfen Eady L.J.

[31]Both Czechoslovakia and, by the time of the Court of Appeal hearing, Israel had indicated willingness to accept Soblen. See Thornbury, "Dr. Soblen," op. cit.

[32]Soblen, op. cit., at p. 1188.

[33]Chateau Thierry, op. cit.

[34]See also C. v. E. (1946) 62 T.L.R. 326.

[35]Britain had entered into a treaty with France in the First World War whereby Frenchmen liable for military service were to be returned to France. However, no Order in Council had been issued which, by s.2 of the Extradition Act, 1870, op. cit., was necessary to give it effect in municipal law. (The Crown has long been understood to lack the power to extradite criminals to other states in the absence of express statutory authority.) The British state obligation was therefore fulfilled by the Government exercising its power to deport aliens and this was the subject of the unsuccessful challenge in the Chateau Thierry case. See generally P. O'Higgins. "Disguised Extradition: The Soblen Case" (1964), 27 M.L.R., p. 521.

[36]Ex parte Sacksteder, op. cit., at pp. 586-587.

[37]Ibid.

[38]Soblen, op. cit., at p. 1181.

[39]Venicoff, op. cit.

[40]Soblen, op. cit., at p. 1184 per Donovan L.J.

[41]Ibid., at p. 1178 per Lord Denning. The question did not arise in the circumstances before the Court as the Home Secretary had indicated his willingness to hear representations. Following the failure of his final appeal Dr. Soblen committed suicide.

[42]G.S. Goodwin-Gill, "The Limits of the Power of Expulsion in Public International Law" (1974), 47 B.Y.I.L., p. 55, n. 94. See Immigration Act, 1971, op. cit., Schedule 2. para. 8 and also R. v. Governor of Pentonville Prison, Ex parte Azam [1973] 2 W.L.R. 949, at p. 960 per Lord Denning: "These provisions as to appeal give rise to a question of the first importance. Do they take away a person's right to come to the High Court and seek a writ of habeas corpus? I do not think so. If Parliament is to suspend habeas corpus, it must do so expressly or by clear implication."

[43]Immigration Appeals Act, 1969, op. cit.

[44]Report of the Wilson Committee on Immigration Appeals, 1967. Cmnd. 3387.

[45]The Right. Hon. James Callaghan, January 22, 1969: H.P.D. (5th series) vol. 776, cc.489-91. Later in the same speech he looked forward to the introduction of comprehensive new immigration legislation. Ibid., c.492.

[46]Report of Wilson Committee, op. cit., para. 115.

[47]H.P.D. (5th Series) vol. 776, c.496.

[48]B.A. Hepple, "Immigration Appeals Act 1969" (1969), 32 M.L.R., p. 668, at p. 670.

[49]See supra, n.45.

[50]Ridge v. Baldwin, op. cit.

[51]Immigration Appeals Act, 1969, op. cit.

[52]19 & 20 Eliz. 2, c.77.

[53]See J.A. Farmer, Tribunals and Government (1974), at pp. 10-11. See also B.A. Hepple, "Aliens and Administrative Justice: The Dutschke Case" (1971), 34 M.L.R., at p. 501. Since 1956, as a result of the European Convention on Establishment the Home Secretary, by way of administrative concession, had allowed aliens whom he proposed to deport in the interest of the public good to be heard by an official or to make representations to the Chief Metropolitan Magistrate at Bow Street. This advice he usually accepted. But the Convention required more and this led to the setting up of the Wilson Committee.

[54]Report of Wilson Committee, op. cit., para. 144.

[55]Ibid.

[56]See s.14(3).

[57]H.P.D. (5th Series), vol. 819, cc.375-77. See also H. of L. Official Report (5th Series), vol. 320, c.998.

[58]This was the procedure which gave rise to the case of Mark Hosenball as to which see infra.

[59]Of course, the Home Secretary remains accountable to Parliament for his decisions in this area.

[60]See the reply by Mr. Quintin Hogg (now Lord Hailsham of Marylebone, L.C.), for the Opposition, to the Home Secretary's statement introducing the Immigration Appeals Bill, op. cit., H.P.D. (5th Series) vol. 776, cc.501-508. He described the then-existing immigration laws as "nonsensical," (c.502).

[61]10 & 11 Eliz. 2, c.21.

[62]Immigration Appeals Act, 1969, op. cit., s.1(1)(a). Giving evidence about the selection of adjudicators to the House of Commons Select Committee on Race Relations and Immigration, the Home Office witness said: "We have not only excluded from consideration all people in the public service, but we have also excluded former members of the immigration service. We thought it absolutely essential that on the initial establishment of the system no one should be able to say that the adjudicators were not completely impartial." H.C. 17 (Part 26) p. 777 (May 7, 1970).

[63]Ibid., s.1(1)(b).

[64]Ibid., Schedule 1 Part 2, para. 125.

[65]Ibid., s.14.

[66]Aliens (Appeals) Order, 1970. Cmnd. 3833. S.I. 1970 No. 151.

[67]Immigration Act, 1971, op. cit., s.8.

[68]See Supra, n.23.

[69]Immigration Act, 1971, op. cit., s.19.

[70]Ibid., s.2. See generally I.A. Macdonald, The New Immigration Law (1972); O. Hood Phillips, Constitutional and Administrative Law (1978), at p. 427; S.A. De Smith, Constitutional and Administrative Law (1977), at p. 411; S.A. De Smith "Immigration Act, 1971" (1972), 30 C.L.J., p. 1.

[71]R. v. Secretary of State for Home Affairs, Ex parte Hosenball [1977] 1 W.L.R. 766, at p. 774.

[72]Immigration Act, 1971, op. cit., s.3(2) and s.22.

[73]Ibid., s.13(1).

[74]Ibid., s.13(5).

[75]Ibid., s.17(1).

[76]Secretary of State for the Home Department v. Croning [1972] Imm. A.R. 51.

[77]Immigration Act, 1971, op. cit., s.15(7).

[78]It has already been noted that the right of appeal is excluded where the ground of the decision was that deportation "is conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature." (Ibid., s.15(3)) See H.L. Official Report (5th Series), vol. 322, c.1173.

[79]Ibid., s.16(1).

[80]I.A. Macdonald, The New Immigration Law, op. cit., at p. 90.

[81]Immigration Act, 1971, op. cit., s.12 and Schedule 5, Part I, para. 1.

[82]Ibid., s.20(1).

[83]Immigration Appeals (Procedure) Rules, 1972, S.I. 1972 No. 1684.

[84]Ibid., para. 14(2)(b). The Convention definition of a refugee is used here.

[85]S.C. 1976-77, c.52.

[86]However, it has been held that a refusal to depart from the immigration rules is not to be treated as involving the exercise of a discretion (Secretary of State for the Home Department v. Glean [1972] Imm. A.R. 84); nor will departure from them constitute unfairness, (Ex parte Hosenball, op. cit., and see infra.)

[87]The current rules are: H.C. 79 (Control On Entry for Commonwealth Citizens, 1972-73); H.C. 80 (Control After Entry for Commonwealth Citizens, 1972-73); H.C. 81 (Control On Entry for EEC and Non-Commonwealth Nationals, 1972-73); H.C. 82 (Control After Entry for EEC and Non-Commonwealth Nationals, 1972-73).

[88]Immigration Act, 1971, op. cit., s.3(2).

[89]Ibid., s.22(7).

[90]H.C. 80, op. cit., para. 49.

[91]The use of the word "is" rather than "is found to be" in the rule quoted (see supra, n.90) begs the whole issue and is indicative of the desire of the Government to maintain administrative control in such matters.

[92]H.C. 79 para. 54; H.C. 80 paras. 30 and 50; H.C. 81 para. 55; H.C. 82 paras. 28 and 57; and see supra, pp. 24-25. A footnote to these paragraphs states that "the criterion for the grant of asylum is in accordance with Article 1 of the Convention relating to the Status of Refugees (Cmd. 9171)."

[93]Immigration Appeals (Procedure) Rules 1972, op. cit.

[94]Ibid., s.14(2)(b).

[95]Immigration Act, 1971, op. cit., s.3(2).

[96]One of the very rare exceptions to this general rule occurred in relation to immigration rules. Some Conservative back-benchers objected to preference being given to EEC nationals over citizens of the "old Commonwealth" countries and revised rules had to be introduced. See H.P.D. (5th Series), vol. 846, cc.1343-1459 (November 22, 1972).

[97]Ex parte Hosenball, op. cit., at p. 785 per Geoffrey Lane L.J.

[98]See supra, n. 89.

[99]9 & 10 Geo. 6, c.36.

[100]Ibid., s.5(1).

[101]Though the immigration rules (currently H.C. 79, 80, 81, 82) are not technically statutory instruments, the distinction is immaterial. See S.A. De Smith, Constitutional and Administrative Law, op. cit., at p. 334, n.56.

[102]I.A. Macdonald, The New Immigration Law, op. cit., at p. 48.

[103]The Secretary of State for the Home Department v. "Two Citizens of Chile," op. cit., at p. 42 per curiam.

[104]Musgrove v. Chung Teeong Toy, op. cit.

[105]Aliens Act, 1905, op. cit.; Aliens Restriction Act, 1914, op. cit.

[106]See, e.g., Ex parte Duc de Chateau Thierry, op. cit.; Ex parte Sarno, op. cit.; Ex parte Sacksteder, op. cit.; Ex parte Venicoff, op. cit.

[107]R.M. Dworkin, "The Model of Rules" (1967), 35 U. Chi. L.R., p. 14 at p. 32.

[108][1968] A.C. 997.

[109]Ibid., at p. 1030.

[110]Soblen, op. cit.

[111]Schmidt, op. cit.

[112]D.R. Fraser & Co. Ltd. v. Minister of National Revenue [1949] A.C.24, at p. 36 per Lord Macmillan.

[113][1967] 2 Q.B. 617.

[114]Cooper v. Wandsworth Board of Works (1863) 14 C.B. (N.S.) 180 ("Whether the board acted judicially or ministerially . . . [they] have omitted to do that which justice requires" at p. 195 per Byles J.); Board of Education v. Rice [1911] A.C. 179, at p. 182 per Lord Loreburn L.C.; Local Government Board v. Arlidge [1915] A.C. 120, at p. 133 per Viscount Haldane L.C.

[115][1949] 1 All E.R. 109.

[116]Ibid., at p. 118.

[117]Ridge v. Baldwin, op. cit.

[118]H.W.R. Wade, "Some Anglo-Canadian Comparisons and Contrasts," Proceedings of the Administrative Law Conference (1979), p. 197 at p. 200.

[119]Re H.K. (An Infant), op. cit.

[120]Ibid., at p. 630.

[121]The discredited Privy Council decision in Nakkuda Ali v. Jayaratne [1951] A.C. 66) was, however, referred to.

[122]Re Pergamon Press Ltd. [1971] Ch. 388; R. v. Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators Association [1972] 2 Q.B. 299; Breen v. Amalgamated Engineering Union [1971] 2 Q.B. 175; Pearlberg v. Varty [1971] 1 W.L.R. 728. In the latter case in the House of Lords ([1972], 1 W.L.R. 534), however, Viscount Dilhorne, while recognizing with the other Law Lords a duty of fairness, was of the view that functional classification remained necessary for the importation of procedural content. See generally D.J. Mullan, "Fairness: The New Natural Justice" (1975), 25 U.T.L.J., p. 281.

[123]Re H.K. (An Infant), op. cit; Re Pergamon Press Ltd., op. cit.; Breen v. Amalgamated Engineering Union, op. cit; Grunwick Processing Laboratories Ltd. v. Advisory, Conciliation and Arbitration Service [1978] A.C. 655. See S.A. De Smith, Judicial Review of Administrative Action (1980), at p. 239, n.57.

[124]Re H.K. (An Infant), op. cit.; Re Mohamed Arif (An Infant) [1968] 1 Ch. 643 (D.C.); R. v. Chief Immigration Officer, Lympne Airport, Ex parte Amrik Singh [1969] 1 Q.B. 333 (D.C.); Ex parte Hosenball, op. cit.

[125][1967] 2 Q.B. 864. See also R. v. Criminal Injuries Compensation Board, Ex parte Schofield [1971] 1 W.L.R. 926.

[126]Bibi, op. cit.

[127]Ibid., at p. 985.

[128]Hosenball, op. cit.

[129]Ibid., at p. 780. In Amratlal Dahyabhai Patel et al. v. Chief Immigration Officer, London (Heathrow) Airport and the Secretary of State for the Home Department, [1977] Imm. A.R. 116 (C.A.) Roskill L.J. said: "That view which I tentatively there [in Salamat Bibi, op. cit.] expressed was disapproved by all three members of this court in Hosenball . . . . Those observations had a tenuous life which must now be deemed to have come to its end." Ibid., at p. 117.

[130]Ibid., at p. 781.

[131]Ibid., at p. 785 per Geoffrey Lane L.J. Cited with approval by the Court of Appeal in Pearson v. Immigration Appeal Tribunal [1978] Imm. A.R. 212, at p. 224 per Stephenson L.J.

[132]Lain, op. cit., at p. 887 per Diplock L.J.

[133]Re H.K. (An Infant), op. cit.; Schmidt v. Secretary of State for Home Affairs, op. cit.; Re Mohamed Arif (An Infant), op. cit.; R. v. Chief Immigration Officer, Lympne Airport, Ex parte Amrik Singh, op. cit.; R. v. Secretary of State for Home Affairs, Ex parte Harnaik Singh [1969] 1 W.L.R. 835; R. v. Home Secretary, Ex parte Mughal [1974] 1 Q.B. 313; R. v. Secretary of State for the Home Department, Ex parte Thakrar [1974] 1 Q.B. 684; R. v. Governor of Pentonville Prison, Ex parte Azam, op. cit.

[134]Re H.K. (An Infant), op. cit.

[135]Schmidt, op. cit.

[136]Ibid., at p. 171.

[137]Azam, op. cit.

[138]Ibid., at p. 31.

[139][1970] 2 Q.B. 417.

[140]Breen v. Amalgamated Engineering Union, op. cit.

[141]R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee (1920) Co. Ltd. [1924] 1 K.B. 171, at p. 205.

[142]Lain, op. cit., at p. 881.

[143]Ibid., at p. 892.

CHAPTER 3

CANADIAN LEGAL ATTITUDES TOWARDS REFUGEES

Introduction

Canadian and British responses to the refugee problem have developed in conceptually different ways. It has been seen that the legal history of refugees in Britain is that of the stance adopted by the Crown and Parliament towards the alien qua alien. In contrast, the refugee story in Canada may be stated broadly to be that of the governmental attitude to the alien qua immigrant.

Until recently, Canada, for geographical reasons, has not needed to define its legal attitude to the refugee in the way that Britain was forced to do. The only possible source of unexpected refugees seeking first asylum, after all, was the United States. This is not to say, however, that refugees were unknown to the Dominion authorities, from the earliest days of Canadian history, even from that quarter. Of the first three large-scale immigrant groups into Canada in the eighteenth and early nineteenth centuries, two emanated from south of the border. The first, that of the United Empire Loyalists attracted by land grants, may scarcely be called a refugee movement in that they came out of choice rather than compulsion. The second, consisting of negro slaves, was undoubtedly such a group. However, it was not seen as posing a threat and, being readily classifiable, was capable of being accommodated by general legislative measures ensuring free entry.[1] Thus there was no perceived need to address the problem

of identifying refugees on a case by case basis, whereby a corpus of political and legal practice towards asylum might be accumulated. The third group consisted of non-conformist religious sects in Europe, seeking freedom from harassment into military service, and was essentially different from the other groups referred to in that those sects, notably the Doukhobors, Mennonites and Hutterites, negotiated special agreements with the government while still in their state of origin. Therefore, again, no ad hoc. legal analysis at a port of entry was required. Indeed, throughout Canadian history up to the present day, this technique of admitting refugees by arm's length negotiation and discretionary governmental relaxation of normal immigration selection procedures has formed, by far, the most significant method of access to Canada for refugees.[2]

Early post-Confederation immigration policy was one of attraction of immigrants to the country from elsewhere than the United States. The government did not concern itself with the reasons for emigration and the first Immigration Acts did not even contain deportation provisions.[3] Such provisions were first legislated into existence in the Alien Labour Act, 1897.[4] Then, following British legislation in the Aliens Act, 1905,[5] the period within which deportation might be effected was extended from one year of admittance to two by the Immigration Act, 1906.[6] In 1910, the deportation period was extended to three years.[7] In 1919, following the Winnipeg General Strike, it was opened out to "any person other than a Canadian citizen or a person having Canadian domicile," regardless of the length of their residence in the country.[8] The Great Crash of 1929 and the

ensuing economic depression brought the flow of immigrants of whatever motivation nearly to a halt.

The frankly restrictive and racist immigration legislation of the inter-war years - specifically in relation to Oriental immigrants in British Columbia - is now well documented history.[9] It is sufficient to note that the Canadian Parliament has never seen any reason to depart from the basic common law principle that admittance to the country is a matter for the municipal law of that country and is a privilege, rather than a right. This corner-stone of all immigration law was affirmed for Canadian law by Lord Atkinson giving judgment for the Privy Council in Attorney-General for Canada v. Cain,[10] when he quoted Vattel's Law of Nations:

> One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace, order and good government, or to its social or national interests.[11]

This position was adopted by the Canadian judiciary itself in R. v. Alamazoff when Mathers C.J.K.B. said:

> The Parliament of Canada acting well within its right, has prescribed the conditions upon which an alien may enter or be permitted to remain in Canada.[12]

The natural corollary of this general attitude, in Canada as much as in Britain, has been that "the conditions upon which an alien may enter" have been found (until the current immigration legislation) in state policy and the regulations flowing from it, rather than statute.

For Canada, this state policy was broadly and generously stated by Prime Minister Mackenzie King in Parliament in 1947 in the following terms:

> Like other major problems of today, the problem of immigration must be viewed in the light of the world situation as a whole. A wise and productive policy for Canada cannot be derived by studying only the situation within our own country . . . . . Among other considerations it should take account of the urgent problem of the resettlement of persons who are displaced and homeless, as an aftermath of the world conflict.[13]

Later, in the same speech, he made a prescient statement that is even more compelling now than when made thirty-five years ago:

> Apart from all else, in a world of shrinking distances and international insecurity, we cannot ignore the danger that lies in a small population attempting to hold so great a heritage as ours.[14]

This policy review marks the beginning of Canada's humanitarian, as opposed to economic, concern with the refugee phenomenon. Although it was not until the passing of the Immigration Appeal Board Act, 1967, that legislative provision was first made, albeit indirectly, for the politically persecuted, Canadian governments handled several large-scale refugee movements in the post-war years by the use of Orders-in-Council and special administrative measures. Specific regulations were passed, for example, in 1956 to provide for Hungarian refugees.[15] Again, in 1966, a White Paper on Canadian immigration policy reiterated Canada's willingness to accept its "fair share of international responsibility for refugees, including the sick and the handicapped."[16] It also stated the government's intention of acceding to the 1951 Refugee Convention,[17] establishing a Refugee Eligibility Commission and introducing separate legislation to help refugees.

The ensuing immigration regulations of 1967[18] did not, however, contain specific provisions for admitting refugees and no comprehensive legal criteria appeared before the Immigration Act, 1976. Discretion, at the immigration officer level, remained the order of the day for those arriving at a port of entry without prior arrangement. This discretion was judicially recognized in Re Hanna,[19] where Sullivan J. for the Supreme Court of British Columbia stated:

> . . . no Canadian court has power to assist [the respondent] in his plea that he be given right of residence in Canada. That is a decision for immigration officials, and for them alone, to make . . . . The jurisdiction of the court in all matters relating to immigration is controlled and restricted and for the most part ousted by . . . the [1952 Immigration] Act.[20]

Yet, in that case, the parameters of executive discretion were implicitly defined by the court in its finding that the deportation order made against the stateless Hanna amounted to a sentence of imprisonment aboard a ship for an indefinite time, and that "no immigration officer has the legal right to exercise such drastic power."[21] It may be noted that this judgment went further to curb discretion than would have been the case in Britain at a similar time. As has been seen, the British courts would probe only the circumstances of the exercise of an official's discretion in the invariably futile search for malum in se and not take account of the consequences of the decision, however unfortunate they may have been.[22]

The British Columbia Court of Appeal was also ready to rectify an immigration decision by the writ of certiorari in a case where a hearing had been "conducted in violation of the essentials of justice" and "was not a valid hearing at all."[23]

The Immigration Appeal Board

The establishment of the Immigration Appeal Board in 1967 broke fresh ground by introducing judicial appeal from ministerial acts.[24] Section 22 of the Immigration Appeal Board Act, 1967,[25] reads:

> . . . the Board has sole and exclusive jurisdiction to hear and determine all questions of fact or law, including questions of jurisdiction, that may arise in relation to the making of an order of deportation.

As the Chairman of the Board noted:

> Before the proclamation of the [1967 Act], no court was seized with full appellate jurisdiction in relation to an order of deportation. There was a privative clause in the [1952] Immigration Act, so that deportation orders were subject to review by the courts only by way of one or more of the prerogative writs, with the result that there were very few judicial precedents directly related to imigration matters.[26]

That this was indeed the case had already been confirmed judicially by the Supreme Court of British Columbia in Re Edery[27] and by the Ontario High Court in Ex parte Hosin.[28] The efficacy of section 22 was affirmed by the Supreme Court in Pringle v. Fraser.[29] Thus, the supervisory jurisdiction of the superior courts over decisions made by special inquiry officers in relation to deportation was removed. It is only due to the enactment of the Federal Court Act,[30] therefore, that the use of the prerogative writs in immigration matters has not become more problematic as the Canadian Parliament has moved by stages towards statutory recognition of the refugee problem.

The Immigration Appeal Board Act, was equally significant for its marking the first statutory notice in Canada of the refugee

characteristic of political persecution. Section 15(1)(b)(i) gave equitable jurisdiction to the Board to stay or quash a deportation order where there existed

> . . . reasonable grounds for believing that if execution of the order is carried out the person will be punished for activities of a political character or will suffer unusual hardship.

Furthermore, section 15(1)(b)(ii) extended this jurisdiction to cases where there existed "compassionate or humanitarian considerations that in the opinion or the Board warrant the granting of special relief."

The first explicit protection for refugees in Canada appeared when the Immigration Appeal Board Act was amended in 1973[31] and restricted the right of appeal to the Board to a few categories. One such category was for an individual "who claims he is a refugee protected by the Convention."[32] There was, however, a qualification to this appellate right, since the Board had to satisfy itself at a preliminary hearing that there were reasonable grounds for supposing that the claim would, in fact, be established if the appeal were to proceed.[33] Additionally, section 15(1)(b)(ii) was amended so as to give the Board jurisdiction for equitable relief only where there were

> . . . reasonable grounds for believing that the person concerned is a refugee protected by the Convention or that, if execution of the order is carried out, he will suffer unusual hardship. . . .

It should be noted that, at that point in time (and prior to the current Immigration Act, 1976),[34] executive discretion had been entirely displaced by the Immigration Appeal Board with its power to grant equitable relief. Introducing the Immigration Appeal Board bill in Ottawa in 1967, the Parliamentary Secretary to the Minister of

Immigration used much the same language as the Home Secretary introducing similar legislation in London in 1969:

> No immigration law can be both enforceable and fair unless it provides a considerable area of discretion in its operation. The law establishes general rules . . . . They must be capable of being tempered in their application, according to the merits of individual cases. There will sometimes be humanitarian or compassionate reasons for admitting people who, under the general rules, are inadmissible.[35]

However, unlike the present position in Britain where discretion remains exercisable at a low level by the immigration officer with its exercise challengeable on appeal,[36] the Canadian position, prior to current immigration legislation, was that discretion as to whether "the person concerned is a refugee protected by the Convention" lay at the higher, judicial, tribunal level.[37] This was confirmed by the Supreme Court in Boulis v. M.M.I.[38] in which Abbott J. stated:

> The Parliament of Canada has made it clear, in my opinion, that the granting of asylum should rest not on random or arbitrary discretion under s.15(1)(b)(i) but rather that a claim to the Board's favourable interference may be realized through evidence upon the relevance and cogency of which the Board is to pronounce as a judicial tribunal. The Board has thus been charged with a responsibility which has heretofore been an executive one.[39]

Since the immigration officer was thus relieved of discretion, the anomalous situation arose, whereby, as one commentator has pointed out,

> . . . a ground which could not, in strict law, be invoked at a special enquiry suddenly became the legitimate basis for an appeal from that enquiry.[40]

In truth, this would matter little to refugee claimants who are concerned rather with having an opportunity to present their case in person in a judicial, or quasi-judicial forum. And, in this regard, it

has to be remembered that, as a result of the amendment to the Immigration Appeal Board Act, the claimant, in Canada, had to clear the hurdle of the preliminary and closed Board deliberation in order to gain access to its equitable jurisdiction under section 15(1)(b), as well as to have his appeal heard in open court.[41] Having done this, however, it is clear from the Supreme Court decision in Boulis v. M.M.I.[42] that the court was not entitled to interfere with the exercise of the Board's discretion under section 15(1)(b), even if it might have exercised the discretion differently itself. The only proviso was the well-established administrative law principle that such a tribunal exercise its discretion bona fide, uninfluenced by irrelevant considerations and not arbitrarily or illegally.[43] In sum, prior to the proclamation in force of the present Immigration Act on April 10, 1978, refugee claims were initially processed without any basis in law.[44]

It may be presumed that the Federal Government's unwillingness to go further than section 15(1)(b) was due to the incompatability of the provisions of the 1951 Refugee Convention,[45] protecting refugees against expulsion, with the deportation provisions of the Immigration Act, 1952.[46] Nowithstanding this, Canada, as a matter of state practice, was attempting to comply with the letter and spirit of the Convention by having an Interministerial Advisory Committee of civil servants (drawn from the Department of External Affairs and the Department of Manpower and Immigration) examine claims to refugee status. In this task, it was aided by the Canadian representative of the United Nations High Commissioner for Refugees, acting in an

advisory capacity.[47] Yet, the question remains as to the extent to which current immigration legislation has succeeded in satisfactorily rendering justiciable the entire refugee process. If it has done so, Canada may fairly claim to have fulfilled its international obligations. If it has not, then, however unbiased and fair its executive procedures may be in practice, it becomes difficult to prove that they have been or will remain so. Executive discretion, after all, means nothing more than the freedom of an official to choose between two courses of action - one of which may be in accord with his state's international obligations and the other not.

The 1951 Refugee Convention: The Constitutional Position

Canada, although not an original party to the 1951 Geneva Convention Relating to the Status of Refugees[48] acceded to it and the 1967 Protocol[49] in 1969.[50] It is pertinent, therefore, to inquire into the extent to which these international agreements can be considered incorporated in Canadian municipal law.

The locus classicus on this point is the Labour Conventions case,[51] where Lord Atkin for the Privy Council stated:

> It will be essential to keep in mind the distinction between (1) the formation, and (2) the performance, of the obligations constituted by a treaty, using that word as comprising any agreement between two or more sovereign States. Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of treaty alone, have the force of law. If the national executive, the government of the day, decide to incur the obligations of a treaty which involve alteration of law they have to run the risk of obtaining the assent of Parliament to the necessary statute or statutes.[52]

This broad statement of the common law attitude (which confirmed the position taken by the Supreme Court five years earlier in Re Arrow River and Tributaries Slide and Bloom Co.)[53] remains as true today, for both Canada and Britain, as when made. The recent obiter dicta of Laskin C.J.C. in MacDonald v. Vapour Canada Ltd.[54] shows willingness to reconsider the Labour Conventions[55] case. However, the Chief Justice was referring there only to the Privy Council's finding that, first, the Federal treaty-making power in section 132 of the Constitution Act, 1867, could not support the impugned legislation as Canada was no longer a part of the British Empire and, second, "that there was no such thing as treaty legislation as such" and that "the distinction is based on classes of subjects."[56] It may be that the reasoning in the Labour Conventions case will be reconsidered on this point and the treaty-making power over all classes of subject-matter restored to Federal competence under section 132 of the Constitution Act, 1867, or the power to enact for the peace, order and good government in Canada. Whether or not this is so, the Federal Government undoubtedly holds the concurrent power to legislate in immigration matters by section 95 of the Constitution Act, 1867, (which also expressly provides for federal paramountcy in this field), and the Labour Conventions case remains good authority for the proposition that legislation is necessary to incorporate international obligations into municipal law.

The Federal Court of Appeal has recently addressed itself to the consequences of this in relation to the 1951 Refugee Convention. In M.E.I. v. Hudnik,[57] Pratte J.A. said:

> The United Nations Convention is not, as such, part of the law of Canada and it clearly does not impose any duty on the appellant. The sole real question to be considered, therefore, is whether the Immigration Act, 1976 imposed on the appellant the duty to consider [Hudnik's] application.[58]

The same judge reached a similar conclusion in the earlier case of M.M.I. v. Fuentes,[59] which prompted Pigeon J., in the Supreme Court, to his vigorous dissent in the important case of Ernewein v. M.E.I.[60] His ground was that such a construction denied to refugees the rights contemplated by the Convention. After quoting the principle stated by Lord Diplock in Post Office v. Estuary Radio Ltd.[61] that "there is a presumption that the Crown did not intend to break an international treaty,"[62] he continued:

> This is obviously a question of major importance but, unless this Court can grant leave to appeal from the denial of leave by the Federal Court of Appeal, it appears that it will remain foreclosed. The [Immigration Appeal] Board obviously is bound to act in accordance with what the Federal Court of Appeal has decided and, if the latter systematically denies leave to appeal from any decision of the Board made in accordance with a prior decision of that Court, as we are told, the fact that the Fuentes case was not appealed will mean that the law has thereby been established and there is no possibility of a review of the question by this Court.[63]

The majority decision of the Supreme Court in the Ernewein case was that no appeal lies to the Supreme Court of Canada from a refusal of the Federal Court of Appeal to grant leave to the Federal Court of Appeal. The indirect, but significant, impact of this decision is, as Pigeon J. remarked, the prevention of any further judicial consideration as to the extent to which the Board may have regard to the provisions of the Convention. This is a most unfortunate result in the refugee context, particularly as the Immigration Act, 1976, in the statement of immigration objectives,[64] itself seems to support the view that Canada does have international legal obligations in this area.

NOTES: CHAPTER 3

[1]See M.L. Hansen and J.B. Brebner, The Mingling of the Canadian and American Peoples (1940), Chapter 5. See also Gerald E. Dirks, Canada's Refugee Policy: Indifference or Opportunism? (1977), Chapter 2.

[2]Under s.115(1)(d) and (e) of the present Immigration Act, 1976, S.C. 1976-77, c.52, the Governor General in Council has powers to make regulations designating classes of persons who may be admitted as refugees with relaxed immigration criteria. Currently, there are three such designated classes: self-exiled people (including only citizens or residents of Communist East Europe with the exception of Yugoslavia); Indochinese (provided they have left the Communist South-East Asian regimes after April 30, 1975); and citizens of Chile, Uruguay and Argentina (who, uniquely, may claim refugee status at the Canadian Embassy in their own country but must still prove that they meet the 1951 Convention definition).

[3]Immigration Act, 1869, s.c. 1869, c.10; An Act to amend the Immigration Act of 1869, s.c. 1872, c.28; Chinese Immigration Act, 1885, s.c. 1885, c.71.

[4]S.C. 60 & 61 Vict., c.11, s.6.

[5]Aliens Act, 1905, op. cit.

[6]R.S.C. 1906, c.93, s.32.

[7]Immigration Act, 1910, S.C. 1910, c.27, s.43.

[8]An Act to amend the Immigration Act, 1919, S.C. 1919, c.25, s.17.

[9]See The Immigrants' Handbook, A Critical Guide, Law Union of Ontario (1981), Chapter 1. See also C.J. Wydrzynski, Civil Liberties of Aliens in the Canadian Immigration process (1976), pp. 61-69.

[10]A.G. for Canada v. Cain, op. cit.

[11]Ibid., at p. 546.

[12][1919] 47 D.L.R. 533, at p. 534.

[13](1947) 3 H.C. Deb., p. 2644; May 1, 1947.

[14]Ibid., at p. 2646.

[15]See A.E. Gotlieb, "Canada and the Refugee Question in International Law" (1975), 13 C.Y.I.L., p. 3, at p. 12, n.22.

[16]Canadian Immigration Policy: White Paper on Immigration, Ottawa, October 1966, at p. 17. See also Gotlieb, "Canada," ibid.

[17]189 U.N.T.S. 137.

[18]See Gotlieb, "Canada," op. cit., at pp. 12-13.

[19](1957) 8 D.L.R. (2d) 566.

[20]Ibid., at pp. 568-69.

[21]Ibid., at p. 574.

[22]See, e.g., Ex parte Soblen, op. cit.

[23]R. v. Spalding [1955] 5 D.L.R. 374, at p. 375.

[24]It was proclaimed in force on November 13, 1967.

[25]R.S.C. 1970, c.I-3.

[26]J.V. Scott, "Immigration Inquiries and Appeals from Orders of Deportation" (1971), Law Society of Upper Canada, Special Lectures, p. 117 at p. 118.

[27](1969) 70 W.W.R. 553, at p. 555

[28]R. v. Department of Manpower and Immigration, Ex parte Hosin (1970) 12 D.L.R. (3d) 704, at pp. 706-8.

[29][1972] S.C.R. 821.

[30]R.S.C. 1970, c.10 (2nd Supp.).

[31]Immigration Appeal Board Act, op. cit., as amended by S.C. 1973, c.27.

[32]Ibid., s.5.

[33]Ibid., s.5.

[34]Immigration Act, 1976, op. cit.

[35](1967) 12 H.C. Deb., p. 13267; February 20, 1967.

[36]Immigration Act, 1971, op. cit., s.19.

[37]Immigration Appeal Board Act (as amended), op. cit., s.15(1)(b)(ii). s.21 of the Act, however, prohibited the Board from exercising its discretion under s.15 in security matters on the production of a Certificate signed by the Minister or Solicitor-General stating that it would be contrary to the national interest for the Board to grant relief. In Prata v. M.M.I. [1976] 1 S.C.R. 376 it was held that the issuance of such a certificate did not contravene the rules of natural justice.

[38][1974] S.C.R. 875.

[39]Ibid., at p. 885.

[40]J.H. Grey, "The New Immigration Law: A Technical Analysis" (1978), 10 Ott. L.R., p. 103, at p. 106.

[41]In M.M.I. v. Fuentes [1974] 2 F.C. 331 (C.A.), at pp. 334-335, Pratte J. gave an excellent description of the procedure.

[42]Boulis v. M.M.I., op. cit.

[43]See D.R. Fraser v. Minister of National Revenue, op. cit., quoted with approval by Abbott J. in Boulis v. M.M.I., op. cit., at p. 877. See also Martin v. M.M.I. [1972] F.C. 844, at pp. 849-50 (C.A.) and Hilario v. M.M.I. [1978] 1 F.C. 697 (C.A.).

[44]This was well illustrated in Sparrow v. M.M.I. [1977] 2 F.C. 403 and Ut Nan Lam v. M.M.I. [1978] 2 F.C.3 (T.D.).

[45]189 U.N.T.S. 150.

[46]See Government of Canada, Green Paper on Immigration Policy (1974), vol. 2, p. 115.

[47]See ibid., Guidelines, Appendix F, p. 225.

[48]189 U.N.T.S. 150.

[49]606 U.N.T.S. 267.

[50]The Governor General in Council approved Canada's accession to the Convention and Protocol on April 15, 1969 and they came into force in Canada on September 2, 1969.

[51]Attorney-General for Canada v. Attorney-General for Ontario [1937] A.C. 326.

[52]Ibid., at p. 347.

[53][1932] S.C.R. 495.

[54](1976) 66 D.L.R. (3d) 1, at pp. 27-29.

[55]Labour Conventions, op. cit.

[56]Labour Conventions, op. cit., per Lord Atkin at p. 351.

[57][1980] 1 F.C. 180 (C.A.).

[58]Ibid., at p. 181.

[59]M.M.I. v. Fuentes, op. cit.

[60](1980) 103 D.L.R. (3d) 1 (S.C.C.). Beetz and Pratte J.J. concurred in the dissent.

[61][1968] 2 Q.B. 740.

[62]Ibid., at p. 757.

[63]Ernewein v. M.E.I., op. cit., at p. 338.

[64]s.2(g).

CHAPTER 4

REFUGEES IN THE CANADIAN IMMIGRATION PROCESS

The Immigration Act, 1976[1]

The Immigration Act, 1976, with its specific but complex procedures relating to refugees, was preceded by wide-ranging research and discussion initiated by the Federal government. In its Report to Parliament, the Special Joint Committee on Immigration Policy recognized that the lack of clearly stated guidelines in Canadian refugee policy made it "ad hoc, inconsistent, and undisclosed."[2] At the same time, it felt that legislative provisions had to be flexible in order to deal with "the number and particularly the variety of refugee problems that arise."[3]

The Government's favourable response to this aspect of the Report was made clear in the 1974 Green Paper[4] which stated:

> One out of every ten new settlers in Canada since the Second World War has been a refugee, and there is notable public support within Canada for this aspect of immigration policy.
>
> A sensitive aspect of refugee policy concerns who should be regarded as eligible for refugee status. It is essential in each such case to establish firmly whether the life or liberty of the person concerned is at risk . . . and to draw a clear distinction between the genuine refugee who is threatened with persecution, and the immigrant whose motive for seeking entry to Canada springs from economic hardship or general dissatisfaction with conditions in his country of origin.[5]

At the same time, the Green Paper exposed the traditional governmental dilemma in immigration law of accommodating clarity of purpose with flexibility. The adumbrated solution was British:

> There would be much advantage if a new Immigration Act devoted itself chiefly to a clear statement of essential principles of policy - (these are lacking now) - and to creating the statutory basis on which the necessary administrative apparatus is erected. Government regulatory powers would then have to operate within this clearly-defined framework. Besides whatever discretion the Minister of Manpower and Immigration possesses under the law to deal with exceptional cases, it is the Regulations that furnish the indispensible flexibility that the very dynamics of the immigration process demand.[6]

The result, however, is quite different from the British "framework" legislation.[7] Whereas the United Kingdom Immigration Act, 1971,[8] commences with a dry statement of neutral general principles to be effected by ministerial rules, Part I of the Canadian Immigration Act, 1976, starts with a ringing declaration of inclusionary Immigration Objectives.[9] Thereafter, it errs nobly in the direction of specificity - particularly in its refugee provisions.

The Interpretation section of the Canadian Act[10] incorporates the 1951 Convention definition of "refugee." This is the sole reference in the Act to the terms of the Convention and, in view of the Canadian constitutional position as to the incorporation of international obligations into municipal law, it is clear that the nature and quality of the procedures for establishing refugee status assume great importance.

The Act has established a tripartite process for this purpose: an examination under oath of the claimant by a senior immigration officer;[11] a review of that officer's transcript of the examination by the Refugee Status Advisory Committee, which then advises the Minister; and, finally, a decision by the Minister.[12] The Act has, therefore, given the previously extra-legal

Interministerial Advisory Committee statutory sanction, and the lacuna in this area, in the 1952 Act, has been bridged. It is to be noted that where a person claims refugee status during an inquiry, that inquiry continues to determine whether or not there are other grounds for making a removal order. But if such grounds are found, the senior immigration officer has no choice but to adjourn the inquiry, conduct an examination under oath relating to the claim, and forward it to the Refugee Status Advisory Committee.[13] By thus placing the claim procedure in the statute, the procedural fuzziness which existed under the 1952 Act has been alleviated. Two cases emphasizing the extra-legal nature of the old procedure and the concomitant exclusion of natural justice principles are Sparrow v. M.M.I.[14] and Ut Nan Lam v. M.M.I.[15] In the former, the Trial Division of the Federal Court had held that nothing in the 1952 Act required a Special Inquiry Officer to consider a refugee claim or permitted him to act on it, if he were, in fact, to consider it. In the latter case, the same Court went one step further and held that, as nothing in the 1952 Act permitted the Officer to act on a claim, the maxim audi alteram partem did not apply.[16]

The minimum effect of the 1976 Act is to ensure statutorily that a claim is not only considered but considered at a higher level by the Refugee Status Advisory Committee, whose members are appointed by the Minister.[17] However, the decision-making process remains in the hands of the executive and, as before, the claimant has no opportunity to present his case personally, at this crucial stage, in front of the decision-maker. In addition, section 72 has confined the

Immigration Appeal Board's jurisdiction of equitable relief on humanitarian or compassionate grounds to appellants who have been determined by the Minister or Board to be Convention refugees but have, nevertheless, had a removal order made against them.[18] Whereas under section 15(1)(b) of the Immigration Appeal Board Act an unsuccessful claimant to refugee status had access to the Board's equitable jurisdiction, the Board now is only available to an unsuccessful claimant if he seeks redetermination of a claim rejected by the Minister, and not as a court of appeal.[19]

The consequence of all these complex jurisdictional factors is that it is only at the end of a long series of procedural stages, involving negative decisions by the Refugee Status Advisory Commitee, the Minister and the Immigration Appeal Tribunal at its in camera preliminary deliberations, that an unsuccessful claimant may have access to a judicial forum. Such access may be gained by Federal Court review of the Board's refusal to allow a redetermination application to proceed under section 71(1). It has been doubted whether such judicial review under section 28 of the Federal Court Act[20] was possible even then. As one commentator has written:

> Due to the complex nature of the question to be decided, the heavy emphasis on factual matters, and the limitations of jurisdiction, it is highly unlikely that an application would ever be launched, much less succeed.[21]

This attitude was also taken by Smith D.J. in the Trial Division of the Federal Court in Taabea and Brempong v. Refugee Status Advisory Committee et al,[22] when he stated (obiter):

> Any person who believes his application [for redetermination] has merit may well feel that he has been unfairly dealt with if it is

> rejected without an opportunity being afforded him to be heard in support of it. This unfortunate result, though not intended, is quite possible under [section 71(1)]. In that event the applicant might be left with only the limited right of review to the Federal Court of Appeal under section 28 of the Federal Court Act . . . and even that may not be available under the terms of the section.[23]

The Federal Court of Appeal has, however, undertaken judicial review under section 28 applications on numerous occasions since then.[24] But the emphasis on jurisdictional factors implicit in such review has resulted in directions to the Board merely to reconsider its decision (and, in so doing, to disregard material it had wrongly taken into account previously), rather than a review by the Federal Court of the merits of a refugee claimant's case. Pratte J. summarized the position in Villaroel v. M.E.I.:[25]

> Section 71(1) does not require the Board to make any findings but merely to form an opinion in the light of its experience as well as of the material before it. From that expressed opinion there is no appeal. As long as the Board has not erred in law in forming its opinion, and has not acted arbitrarily or in the light of irrelevant considerations, its decision, under section 71(1), cannot, in my opinion, be reviewed by the Court.[26]

In Maldonado v. M.E.I.[27] a majority of the Court did, in fact, hold that the Board had acted arbitrarily in choosing, without reason, to doubt the claimant's credibility concerning the sworn statements by him and thus the way was open for the facts of a refugee claim to be interpreted above the tribunal level. But it is clear that in most cases, as the decision in Villaroel[28] indicates, section 71(1), as written, creates a barrier at the end of the factual determination process, preventing a claimant from personally establishing the merits of his case.

This being so, it is relevant to examine whether or not, by application of natural justice principles, a claimant may have access to the decision-making process at the first stage of the redetermination process by the Board or the earlier stage of the Refugee Status Advisory Committee. This is itself dependent on, first, characterization of those proceedings (for reasons which will become apparent) and, second, on the Canadian judicial attitude as to what, if any, principles of natural justice are applicable in such circumstances.

Characterization of the Inland Determination Process

a/ The Refugee Status Advisory Committee

In 1981, the Federal Court of Appeal was invited to characterize the initial stages of the refugee status determination process in Brempong v. M.E.I.[29] In that case, the court considered a section 28 application to review and set aside the Minister's determination that the applicant was not a Convention refugee. The applicant had argued that the Minister's and Committee's determination was part of the hearing process required to be carried out in a quasi-judicial manner. The application was dismissed unanimously. The nub of the matter lay in the jurisdiction of the court pursuant to section 28(1) of the Federal Court Act:

> Notwithstanding section 18 or the provisions of any other Act, the Court of Appeal has jurisdiction to hear and determine an application to review and set aside a decision or order, other than a decision or order of an administrative nature not required by law to be made on a judicial or quasi-judicial basis.[30]

In Ministry of National Revenue v. Lybrand[31] (cited by the Federal Court in Brempong) Dickson J., speaking for the Supreme Court,

enunciated four criteria, none of them necessarily determinative, for resolution of the problem as to whether a decision is required by law to be made on a judicial or quasi-judicial basis:

> 1. Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
>
> 2. Does the decision or order directly or indirectly affect the rights or obligations of persons?
>
> 3. Is the adversary process involved?
>
> 4. Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?[32]

The Federal Court in the Brempong case experienced no difficulty in rejecting the notion that the examination under oath before the senior immigration officer,[33] the right to counsel at that point in time, the subsequent referral of the transcript by the Minister to the Committee, and the advice of the Committee to the Minister, were not part of a "hearing" process required to be carried out in a quasi-judicial manner. Specifically, the right to counsel at the examination under oath[34] was not viewed as importing an adversarial element into the process in as much as the Minister, as distinct from the claimant, was not entitled to be so represented. Moreover, even were it to be assumed that the examination under oath was a hearing, it was the Court's view that such a hearing ended when the examination ended; what happened, thereafter, was "purely administrative in nature and is not required to be carried on in a quasi-judicial manner."[35]

The fourth criterion of Dickson J. poses, in itself, a nice problem of characterization. Is the Minister merely implementing a

policy with regard to refugees when he makes his determination, or is he applying substantive rules? (They might well be viewed as more substantive in the Canadian than the British context, in as much as the refugee definition, at least, is anchored in the text of the statute.) But Urie J. in the Brempong case found support for the former view in the Supreme Court decision in M.M.I. v. Hardayal[36] in which the power of the Minister under the Immigration Act, 1952,[37] to grant, extend or cancel an entry permit was at issue. Giving judgment for the Supreme Court, Spence J. there stated that

> . . . to require such a permit to be granted, extended or cancelled only in the exercise of a judicial or quasi-judicial function would defeat Parliament's purpose in granting the power to the Minister. . . . . [The] evidence indicates that the power is only used in exceptional circumstances and chiefly for humanitarian purposes. Such power was, in the opinion of Parliament, necessary to give flexibility to the administration of the immigration policy, and I cannot conclude that Parliament intended that the exercise of the power be subject to any such right of a fair hearing as was advanced by the respondent in this case.[38]

It is open to question, however, whether the power in Hardayal was analogous to that in the Immigration Act, 1976, in relation to refugees. There is an argument to be made that the cumulative effect of the statutory incorporation of the refugee definition, the statement of immigration objectives which refers to Canada's international obligations to refugees, and the specificity of refugee procedure show Parliamentary intent to impose substantive rules on the Minister, such as to require that the procedure be carried out in a quasi-judicial manner. The consequence, if this argument were accepted, would be to open up the determination procedure to the claimant at an early stage in the otherwise protracted proceedings. The counterargument - and the

one that found favour with the Federal Court of Appeal in Brempong - uses, paradoxically, the same dialectic material; if Parliament has provided protection from bureaucratic abuse by the Immigration Appeal Board redetermination procedure, and if the precise language in the sections of the act dealing with the Committee's deliberations and the Minister's determinations is to be given full value, it has to be recognized that Parliament intended to leave these initial stages of status determination entirely in the administrative arena and not circumscribed by the procedural rules of natural justice.[39] Given that the refugee procedures in the Act are so specific, it is not surprising that the Federal Court, charged with the primary duty of statute interpretation, should come to such a conclusion in Brempong.

b/ Redeterminations by the Immigration Appeal Board

The Brempong result would be easier to accept were it not for the fact that, as has already been noted, the next step in the status establishment process - redetermination of a rejected claim by the Immigration Appeal Board - is subject to a preliminary and closed consideration of the application for redetermination. Section 71(1) states:

> Where the Board receives an application . . . it shall forthwith consider the application and if, on the basis of such consideration, *it is of the opinion that there are reasonable grounds to believe that a claim could*, upon the hearing of the application, *be established*, it shall allow the application to proceed, and in any other case it shall refuse to allow the application to proceed and shall thereupon determine that the person is not a convention refugee. [Italics are mine.]

The emphasized proviso, brought forward in almost identical terms from the amended Immigration Appeal Board Act,[40] was clearly intended

to protect the Board from being required to spend time hearing many applications that have no hope of success.[41] But, in view of the fact that the decision of the Board is not a decision on an appeal (and no appeal, therefore, lies to the Federal Court of Appeal under section 84),[42] and that almost certainly the Board cannot re-open proceedings to take in new evidence when an application has been refused to allow to proceed,[43] this is the least satisfactory part of the Immigration Act, 1976, as regards refugees. It was the view of the Chairman of the Immigration Appeal Board giving evidence to the Standing Committee on Labour, Manpower and Immigration Proceedings considering the bill to establish the current Immigration Act, that

> . . . all refugee claims redeterminations should be heard. The Board should be required to hold a full hearing in all cases. A man's life is involved and the Convention is a highly complex International Treaty.[44]

She was merely repeating the attitude taken by the Board, in the early days of the amended Immigration Appeal Board Act[45] when it had recognized the unfairness inherent in not allowing an oral hearing to the refugee claimant at the level of the application to allow the appeal to proceed. In Cylien,[46] the Chairman had stated:

> . . . it would be monstrous to conclude from the wording of s.11(3) that a democratically elected Parliament in a country under a rule of law intended a judicial tribunal . . . in the case of persons claiming to be refugees, to determine the future fate, or even the life of a man, without a properly constituted hearing on this point. It is no answer to say that a claimant has a full opportunity to make his claim, in writing. His declaration of claim is only part of the evidence; he must have every opportunity to establish, as the respondent must have every opportunity to contest, his claim to refugee status within the meaning of the Convention - a highly complex international treaty . . . and part of the law of this country.[47]

Similarly, in Diaz-Fuentes,[48] the Vice-Chairman of the Board said that the procedure of deciding whether to allow the appeal to proceed on the basis of a declaration of the refugee claimant alone, without an oral hearing,

> . . . would introduce into a matter so delicate, so fraught with consequences - an individual's very life may be at stake - an arbitrary element which is repugnant to our concept of the judicial process and which would be contrary to the accepted notion of fundamental or natural justice. . . .[49]

But, on appeal by the Minister (as then allowed), it has been seen that the Federal Court of Appeal held that the Refugee Convention was not part of the law of the country (contrary to the Chairman's statement in Cylien).[50] Consequently, emphasis was placed on the letter of the statute rather than the spirit of the international obligation. The Court held that the Board must decide against the claimant

> [if], after considering the declaration, and not, it must be noted, on the basis of the facts . . . which may be established in any hearing the Board may hold, the Board concludes that the claim is not a serious one.[51]

Since the Fuentes decision, section 11(3) and its successor section 71(1) have received considerable judicial attention. The fact that under the Immigration Appeal Board Act (as amended) the Board was not required to give reasons for its refusal to allow an application to proceed prompted Pigeon J. to his dissenting judgment in the Supreme Court in Ernewein v. M.E.I.:[52]

> In the present case no indication was given to the appellant of the reasons for which her claim to refugee status was denied and, in my view, this raises a very serious question. The Immigration Appeal Board is not an administrative agency but a "court of record" (s.7, now s.65). It must therefore be subject to the rule that it is not enough that justice be done, it must appear to be done. It is also

> a well established principle that audi alteram partem is a rule of natural justice so firmly adopted by the common law that it applies to all those who fulfil judicial functions and it is not excluded by inference.[53]

Now, under section 71(4), the Board is required to give reasons for its determination, thus providing the claimant with the means to prepare a section 28 application for judicial review. This is a vital innovation as it has been shown that, without this, it was possible for a claimant to move from the initial examination under oath by an immigration officer, through to resumption of the inquiry and removal from Canada without knowing the substance of the evidence against him or being able to put his case personally in front of a decision-maker.[54]

Notwithstanding this, however, it is legitimate to ask why the judicial attitude (as opposed to the Parliamentary one) since Fuentes has remained consistently restrictive in its construction of the wording of section 11(3) and section 71(1). In Lugano[55] and Maslej[56] (decided under the Immigration Appeal Board Act), the wording of the proviso was held to go further than merely determining whether the claim was frivolous. It required an assessment of whether there existed reasonable grounds for believing it is more likely than not, on a balance of probabilities, that the applicant can prove his status at a full hearing. (The Supreme Court decision in Prata v. M.M.I.[57] was also cited in both cases to show that a claimant in this situation could not invoke the audi alteram partem rule; the reasoning was that, in seeking to obtain the exercise by the Board of its discretionary powers under section 15 of the Immigration Appeal

Board Act, Prata was not asserting a right but attempting to obtain a discretionary privilege.)

Reviewing section 71(1) of the current Act in the important case of Kwiatkowski v. Immigration Appeal Board,[58] the Federal Court of Appeal followed these precedents it had set for itself when Pratte J. ruled:

> The Board is authorized to allow a claim to proceed only when it is of opinion that there are reasonable grounds to believe that the applicant will be able (not might be able) to establish his claim at the hearing.[59]

In other words, the Board not only has to decide whether the facts alleged by the claimant, if true, could establish him as a refugee but also whether the factual allegations can be proven. This was confirmed by the decision of the same court in Villaroel.[60] Thus, the board is not required to allow applications to proceed just because credibility is in question, although this would have been one way of avoiding the present restrictions on redeterminations in the presence of the applicant. The consequence is that not only does the applicant "not have the benefit of the doubt; on the contrary, the doubt must be resolved against him."[61]

The ruling in Kwiatkowski[62] indicates well not only the judicial deference to what is presumed to be Parliamentary intention in enacting section 71(1) but an administrative bias in doing so. Kwiatkowski had argued that the authority conferred on the Board by that section should not be construed so as to deny an oral hearing, where fairness required it in the light of the issues of fact and law raised by the application. But the Court did precisely that by

impliedly viewing the Board as acting in some sort of administrative capacity and being required by Parliament to exercise a statutory discretion. Faced with ambiguity in the English text ("could"), the Court preferred the French text ("pourra vraisemblablement"), which was less so. Le Dain J. at least noticed the problem before finally falling in with the majority opinion:

> This is a somewhat unusual authority - to determine at a preliminary stage, not whether there is an arguable case, but whether there is a probability or likelihood of success, without knowing what a full hearing might add to the strength of the case. It is an authority that gives rise to understandable concern, but it is one that Parliament appears clearly to have conferred upon the board for reasons which it has judged sound.[63]

However, all manoeuvrings within the confines of the Immigration Act, 1976, and administrative law principles, undertaken with a view to allowing the refugee claimant an opportunity to state his case before the decision-maker, face one basic problem. It is to be found in the second of the four criteria which Dickson J. set out in Lybrand[64] for establishing whether a decision is required by law to be made on a judicial or quasi-judicial basis: "Does the decision or order directly or indirectly affect the rights and obligations of persons?"[65] This subsumes the other criteria in importance in the context of immigration law and is the rock on which aliens' claims of access to the judicial process in common law jurisdictions have traditionally foundered. At base, an alien taking advantage of procedures set out in British or Canadian immigration legislation is not laying claim to any common law right existing independently of the governing statute but only has the right to ask that a privilege be extended to him in the way that Parliament has prescribed. Martland J. giving

judgment for the Supreme Court in Prata v. M.M.I.[66] affirmed this fundamental when he stated:

> The appellant is seeking to remain in Canada, but the deportation order . . . establishes that, in the absence of some special privilege existing, he has no right whatsoever to remain in Canada. He does not, therefore, attempt to assert a right but, rather, attempts to obtain a discretionary privilege.[67]

He then went on to cite post-war English authorities for this position.[68]

The refugee is in no better position as the Convention does not purport to change the customary rule that no individual, even a refugee, may assert a right to enter a state unless he is a national of the receiving state. As has often been stated, it is the right of a state to grant asylum and not the right of a refugee to be granted it.[69] Case law leaves no room for doubt that, as judicially interpreted, the "rights" of refugees under Canadian immigration legislation are limited. Under the amended Immigration Appeal Board Act,[70] the Federal Court of Appeal in Fuentes[71] had held that the reference to the Refugee Convention only provided a refugee with two rights: that of an appeal to the Board under section 11(1)(c) and that of access to the Board's special relief on compassionate grounds under section 15(1). The situation under the Immigration Act, 1976, is different only to the extent that the procedure has been altered. In Boun-Leua v. M.E.I.[72] the applicant had been determined by the Minister to be a Convention refugee but, on resumption of the initial inquiry, the adjudicator found that he was no longer lawfully in Canada and was consequently not a Convention refugee who was entitled to remain in Canada.[73] A section 28 application was made submitting

that the fact that he was a Convention refugee accorded him lawful status in Canada. But the Federal Court of Appeal dismissed the application unanimously on the ground that the Act accorded a particular status only to Canadian citizens, immigrants and visitors. Urie J. said:

> The only rights accorded to a Convention refugee are first, not to be returned to a country where his life or freedom would be threatened, a right granted by virtue of section 55 of the Act, and, second, to be able to appeal a removal order or a deportation order made against him on a question of law or fact or of mixed law and fact and "on the ground that, having regard to the existence of compassionate or humanitarian considerations" he should not be removed from Canada (sections 72(2)(a) and (b) and 72(3)).[74]

Refugee claimants (as opposed to persons determined by the Minister to be Convention refugees) are a fortiori in a worse position as their only right is to have their status determined in the way that Parliament has prescribed.

It seems, then, that the determination procedures undertaken by the Refugee Status Advisory Committee and the Minister are to be characterized as administrative. Moreover, the Immigration Appeal Board, although a court of record, has been allowed to conduct the first stage of the redetermination procedure by use of quasi-administrative discretion sufficient to exclude the audi alteram partem rule. It remains to be seen whether there is any duty laid on the executive in this area, independent of the terms of the statute. Is there a duty to be fair, and if there is, of what does the duty consist and does it have procedural consequences?

The Fairness Question

In R. v. Secretary of State for Home Affairs, Ex parte Hosenball[75] Lord Widgery C.J. quoted with approval the summarization in Halsbury's Laws of England which acknowledges the fluidity in British jurisprudence on the concept of fairness:

> The content of the rules of natural justice is not sterotyped, and a duty to act judicially does not necessarily connote an obligation to observe the procedural and evidential rules of a court of law. In some situations, where it has been said that a deciding body is under a duty to act fairly, a distinction appears to have been drawn between such a duty and a more vigorous duty to act judicially in accordance with natural justice; but, given the flexibility of the rules of natural justice, the meaning of this distinction is not always clear, and a duty to act fairly can generally be interpreted as meaning a duty to observe certain aspects of the rules of natural justice though in some situations the expression is used without reference to procedural duties.[76]

It has taken somewhat longer for Canadian jurisprudence to reach this stage. Professor Wade, in fact, has said that observing the state of administrative law in Canada was "like watching a re-run of an old film."[77] Whereas in Britain the judiciary has adopted a pragmatic approach to the problem as the tenor of the above-quoted passage from Halsbury's Laws of England suggests, the crystallization of the dichotomy in sections 18 and 28 of the Federal Court Act between administrative functions, on the one hand, and judicial and quasi-judicial functions, on the other, has forced Canadian judges, inevitably, into an overt continuation of the characterization process. Approached from this angle, conceptual problems as to the position of "fairness" in the traditional scheme of natural justice - with consequential problems as to the availability of the prerogative writs - have been raised in Canadian jurisprudence and only recently been solved by the Supreme

Court decision in Martineau v. Matsqui Institution Disciplinary Board (hereinafter Martineau No. 2).[78] Such problems are not a cause for surprise if it is remembered that the idea of "fairness" has not grown in a vacuum as a conceptual answer to the difficulty of characterization of functions but rather on an ad hoc basis as a means of controlling the exercise of executive power in appropriate cases.

This has been true in both Britain and Canada. Yet the "fairness" question in relation to refugees is clearly of less significance in the former for two reasons. First, the British Immigration Act, 1971, reduced the importance of judicial review by granting a direct right of appeal over the result of the exercise of executive discretion.[79] Thus, at a stroke, the nature and extent of procedural ramifications to any duty of fairness that may exist are neatly excised from the refugee issue since the use, as well as the abuse, of discretion is statutorily justiciable. Second, because of the framework form of the British Immigration Act, 1971, judicial attention has focussed on characterization of the criteria under which its administrators operate - delegated legislation or mere policy guidelines - rather than the traditional categorization of the manner in which they operate - administratively or quasi-judicially. The combination of these factors has led to a stunting of the growth of the "fairness" doctrine in relation to aliens which, however, is mitigated by the procedural safeguards built into the Act.

The Canadian Immigration Act, 1976, is cast quite differently. The multiplicity of administrative proceedings coupled with provision for redetermination rather than appeal in the case of refugee claimants

clearly invites the judicial scrutiny it has received. Characterization of the refugee status determination procedure has continued. The process has been conducted the more easily for the fact that the issue has traditionally been viewed as lying well beyond the intersection of policy and judiciality and at a point where the courts have attempted to divine Parliamentary intention (as in Brempong[80]) and also met the stumbling-block of the "rights- privileges" attitude to aliens (as in the Lugano, Maslej and Boun-Leua cases[81]).

In counterpoint to this traditional approach, however, there have also been recent developments in administrative law at large which show that the judiciary is now prepared to impose a duty to act fairly on administrative decision-makers with the consequential effect of reducing the importance of the old distinction between administrative and quasi-judicial functions. In this way, the theoretical possibility, at least, of remedial action for refugee claimants by judicial review under the Federal Court Act is admitted.

It has been noted earlier that the duty to act fairly had first been adverted to in Britain (in the recent past) in the 1967 immigration case of Re H.K. (An Infant).[82] But, as one writer has remarked, "Canadian courts reacted with surprising conservatism to this innovation."[83] It was not until 1979 that the Supreme Court in Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police[84] stated unequivocally that this duty to act fairly existed in Canada also. Speaking for a majority of the Court, Laskin C.J.C. said of a constable who had been summarily dismissed as a result

of an administrative decision:

> [He] cannot be denied any protection. He should be treated "fairly" not arbitrarily. I accept . . . as a common law principle what Megarry J. accepted in Bates v. Lord Hailsham, (1972) 1 W.L.R. 1373 at p. 1378, "that in the sphere of the so-called quasi- judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness."[85]

The judgment as a whole, however, is imprecise as to the role that analysis of a function as administrative or quasi-judicial was to play in the future. If the duty to act fairly is just one more rule of natural justice to be applied at the bottom end of the scale as a minimum protection, characterization has to be carried out since natural justice may involve a greater degree of procedural protection than fairness. If, on the other hand, fairness and natural justice are identified as one large, umbrella-like and elastic concept, the difficulty of characterization that the Chief Justice also alluded to in his Nicholson judgment[86] is solved and it becomes possible to apply the procedure appropriate to the statutory decision-making function in question.

In the context of refugee status procedures, however, imprecision as to the role of characterization in discussing the "fairness" concept is only of difficulty in proportion to the ambiguity of sections 18 and 28 of the Federal Court Act. These sections being predicated on a classificatory basis operate as a force majeure and solve the conceptual problem, which the judiciary faces, of rationalizing the relationship of "fairness" to the rules of natural justice. Speaking for Laskin C.J.C. and McIntyre J., Dickson J. in Martineau (No. 2)[87] glossed over the Chief Justice's ambivalence in

Nicholson on this "relationship" problem when he said:

> The approach taken to the "fairness" doctrine in [the Nicholson case], notably its differentiation from traditional natural justice, permits one to dispense with classification as a precondition to the availability of certiorari.[88]

But his following words left no doubt that the effect of the Federal Court Act is to solve the problem for the judiciary:

> Conceptually there is much to be said against such a differentiation between traditional natural justice and procedural fairness, but if one is forced to cast judicial review in traditional classification terms, as is the case under the Federal Court Act, there can be no doubt that procedural fairness extends well beyond the realm of judicial and quasi-judicial, as commonly understood.[89]

Later in his judgment, Dickson J. concluded on this point that

> [in] general, courts ought not to seek to distinguish between the two concepts, for the drawing of a distinction between a duty to act fairly, and a duty to act in accordance with the rules of natural justice, yields an unwieldy conceptual framework. The Federal Court Act, however, compels classification for review of federal decision-makers.[90]

Indeed, the broad effect of Martineau (No. 2) was not only to resolve this conceptual problem but also the practical problem of the ambit of the writ of certiorari in general and find as its basis the general duty of fairness resting on all public decision-makers. At issue in Martineau (No. 2) and also Martineau and Butters v. The Matsqui Institution Inmate Disciplinary Board[91] (hereinafter Martineau (No. 1)) was the sentencing of a prisoner, Martineau, to a short period of confinement in the penitentiary's special corrections unit for a disciplinary offence dealt with as "flagrant or serious." He made joint applications to the Federal Court for certiorari in the Trial Division and for judicial review under section 28 in the Court of Appeal.

In Martineau (No. 1) a bare majority of the Supreme Court[92] upheld the Court of Appeal's dismissal of the section 28 application on the ground that the disciplinary order was an "order of an administrative nature not required by law to be made on a judicial or quasi-judicial basis."[93] Even though the majority of the Supreme Court in that case felt obliged by section 28 of the Federal Court Act to concentrate on the duty to act judicially, the Court was unanimous in Martineau (No. 2) in holding that section 18 of the Act vests in the Trial Division of the Federal Court the jurisdiction to grant the common law remedy of certiorari and that the basis for the broad reach of the remedy is the general duty of fairness resting on all public decision-makers. In fact, Dickson J. pushed the boundaries somewhat further than the British authorities have done when he stated:

> In my opinion, certiorari avails as a remedy wherever a public body has power to decide any matter affecting the rights, interests, property, privileges, or liberties of any person.[94]

The sweeping reference not only to "privileges" but also to "any person" rather than the usual limiting expressions such as "subject" or "citizen" is surprising. However, this statement is certainly limited by consideration of the fact that the prerogative writs are inherently discretionary and that their primary object is "to make the machinery of government operate properly in the public interest."[95]

In relation to disciplinary matters such as those involved in the two Martineau cases, both judgments in Martineau (No. 2)[96] emphasized that the new power of judicial review for breach of the duty to be fair was to be exercised with restraint. In doing so, Dickson J.

came to exactly the same conclusion as regards the relationship of prison rules and fairness as Lord Denning did in Hosenball[97] as regards immigration rules and fairness. The Master of the Rolls had said that the rules were mere rules of practice departure from which did not constitute unfairness, although they could be used as a touchstone in deciding whether an immigration officer had acted fairly. Similarly, in Martineau (No. 2) Dickson J. stated:

> The question is not whether there has been a breach of the prison rules, but whether there has been a breach of the duty to act fairly in all the circumstances. The rules are of some importance in determining this latter question, as an indication of the views of prison authorities as to the degree of procedural protection to be extended to inmates.[98]

Both the British Court of Appeal and the Supreme Court of Canada[99] seem to be in agreement that policy guidelines or directives as opposed to delegated legislation do not create rights, enforceable by action on those whom they affect, although they may provide evidence of abuse of discretion such as to warrant judicial review.

In relation to refugee status procedures in Canada, however, the question is whether statutory provisions properly so-called will be deemed to require fleshing out by any procedural requirements of fairness above and beyond the minimum requirement of good faith required of every statutory decision-maker. In this regard, it has been well established at the Supreme Court level on several occasions that, even where the audi alteram partem rule applies, there is no requirement that individuals entitled to its benefit be granted an oral hearing before the decision-maker.[100] Moreover, in Hoffman-LaRoche Ltd. v. Delmar Chemical Ltd.[101] the Supreme Court held that if there is

provision for the making of written submissions that, by itself, will be regarded as sufficient compliance with the rule. In this context, it will be recalled that section 70(2) of the Immigration Act, 1976, not only provides the opportunity, but requires an applicant for redetermination of refugee status, to supply the Immigration Appeal Board with documents relating to the nature of the application, a statement of the relevant facts, a summary of the information and evidence intended to be offered at the hearing and any other representations he may consider relevant. The Kwiatkowski case[102] makes it clear that, whatever the characterization of the Board's function when it considers whether an application for redetermination should be allowed to proceed, it is not possible for the applicant to gain the oral hearing by judicial review which he has been denied by legislative action. In Nicholson[103] Laskin C.J.C., citing Lord Denning's judgment in R. v. Race Relations Board, Ex parte Selvarajan,[104] held that, also under the general duty of fairness, tribunals were required to give an opportunity of a hearing either orally or in writing. But it would be strange indeed if such a duty provided more procedural entitlement than that given by the stricter rules of traditional natural justice - particularly as it has been stated already that the Chief Justice specifically accepted the existence of two different standards of procedural protection triggered by the characterization process.[105] In the context of the admission of aliens where the judiciary has always been loath to tamper with parliamentary intention and executive discretion, the maxim expressio unius est exclusio alterius seems to be applicable. Only legislative amendment will suffice to permit oral

hearings by the Board at the first stage of the redetermination process.[106]

If the duty to act fairly is to have any significance in the refugee context, it is to be looked for at the earlier stage of ministerial decision-making under section 45 of the Immigration Act, 1976. The Brempong case[107] unequivocally established that process as administrative. Moreover, in Saraos v. M.E.I.[108] Pratte J. for the Federal Court of Appeal ruled:

> [The] Minister may consider and base his decision on any evidence or material, obtained from any source, without having to give a chance to the claimant to respond to that evidence.[109]

The judgment was, however, qualified by reference to the requirement that the Minister act fairly in so doing. The Trial Division of the same Court had, in fact, already put teeth into the fairness concept under the Immigration Act, 1976, one year earlier in Taabea and Brempong v. Refugee Status Advisory Committee et al.[110] In that case, the applicants had been determined not to be Convention refugees by the Minister. They applied for orders of prohibition prohibiting the Board from proceeding with their applications for redetermination until they had received the reasons for the unfavourable determination from the Minister. They relied on the principle that an official conducting an administrative inquiry, though not bound by the rules applicable to judicial proceedings, is, nevertheless, bound to act fairly towards persons who are the subject of the inquiry. In the instant case, they claimed that, by refusing to give them the Minister's reasons for deciding that they were not Convention refugees, the Registrar of the Refugee Status Advisory Committee had acted unfairly. The Court

accepted this argument and held that the refusal to give to the applicants the Minister's reasons for his decisions amounted to unfair treatment that might prejudice the possibility of their having a full and fair redetermination hearing, or even any redetermination hearing at all. Since it has never been a principle of natural justice that reasons be given for decisions,[111] this was a welcome, though surprising, finding and is a good illustration of the practical effect and value of the application of the duty of fairness. It also attaches weight and significance to the time-honoured tenet that there is no such thing as an unfettered discretion and, in addition, to the fact that mere good faith on the part of a decision-maker is insufficient. By this procedural device, it can now not only be established whether the decision-maker acted arbitrarily or on the basis of irrelevant considerations but also whether there has been any inconsistency in the application of the refugee definition to factual situations. Also, it may well be that inconsistency (whether viewed as an example of substantive unfairness or just another example of abuse of discretion)[112] will be found to be ground for judicial review in these circumstances, given that the Minister is applying a defined standard to each refugee claim and the possibly severe consequences of a rejected claim. Smith D.J. in Taabea[113] felt able to put "fairness" into its true perspective, whereby, it is dependent "on the nature of the investigation and the consequences which it may have on persons affected by it."[114] He did so by the rare expedient of construing the Immigration Act, 1976, strictly and against the Minister. The fact that the Act does not require him to inform a claimant of the reasons

for his decision does not mean that he is prohibited from doing so and refusal by the Minister to give reasons does not have statutory sanction. It is submitted that the circumstances at issue in Taabea are precisely those which a flexible doctrine of fairness has been evolved to meet.

In Brempong,[115] concerning the same applicants but the different issue of the jurisdiction of the Federal Court of Appeal to review the ministerial decision, the propriety of requiring the Minister to give reasons in such circumstances was doubted.[116] The reaction, therefore, of the same court to a more far-reaching claim for procedural fairness in Mensah v. M.E.I.[117] comes as no surprise. The case involved a section 28 application to review and set aside a decision of the Immigration Appeal Board determining that Mensah was not a Convention refugee. The main arguemnt of the applicant was that the decision of the Board was vitiated by the irregularity of the minsiterial decision made pursuant to section 45. The irregularity consisted, as the applicant claimed, in the failure of the Minister to give him an opportunity to respond to the objections that the Minister had to his claim. Pratte J. had no hesitation in disposing of that contention:

> [It] is sufficient to say that a careful reading of section 45 and following of the Immigration Act, 1976 shows clearly that Parliament did not intend to subject either the Minister or the Refugee Status Advisory Committee to the procedural duty of fairness invoked by the applicant.[118]

Given the circumspection with which the courts have traditionally scrutinized the way in which the executive has performed its statutory and extra-statutory powers over aliens, the Mensah decision

was inevitable. The duty to act fairly in a procedural sense cannot be invoked so as to make actual proceedings before the Refugee Status Advisory Committee and the Minister reviewable under the Federal Court Act. The Canadian Parliament has been too specific in its description and allocation of determinative power over refugee claimants to admit such an eventuality.

NOTES: CHAPTER 4

[1]S.C. 1976-77, c.52.

[2]The Special Joint Committee of the Senate and of the House of Commons on Immigration Policy, Report to Parliament, (1975), para. 91 at p. 32. The quoted description was that of Dr. Freda Hawkins giving evidence to the Committee on June 10, 1975 reported in Minutes of Proceedings and Evidence of the Special Joint Committee, ibid., Issue No. 33 at p. 24.

[3]Ibid., at p. 32.

[4]Office of the Minister of Manpower and Immigration, Highlights from Green Paper on Immigration and Population, (1974).

[5]Ibid., at p. 15.

[6]Ibid., at p. 15.

[7]This was the descriptive term employed by Lord Widgery C.J. in R. v. Home Secretary, Ex parte Hosenball [1977] 1 W.L.R. 766, at p. 774.

[8]Immigration Act, 1971, op. cit.

[9]Immigration Act, 1976, op. cit., s.3.

[10]s.2(1).

[11]s.45(1).

[12]s.45(4).

[13]s.45(1). The effect of this removal of decision-making power from the senior immigration officer is to render it immaterial that the examination under oath may be adjourned and continued under a different officer. See Re Bastienne I.A.B. May 26, 1980, No. 80-1074, C.L.I.C. No. 20-4.

[14][1977] 2 F.C. 403 (T.D.).

[15][1978] 2 F.C. 3 (T.D.).

[16]Ibid., at p. 6, where Walsh J. quoted the Supreme Court judgment in Guay v. Lafleur [1965] S.C.R. 12: "the maxim 'audi alteram partem' does not apply to an administrative officer whose function is simply to collect information and make a report and who has no power either to impose a liability or to give a decision affecting the rights of parties" (per Cartwright J. at p. 18).

[17]Immigration Act, 1976, op. cit., s.48. According to a Press Release from the Minister of Employment and Immigration, December 14, 1981, the Committee includes representatives from the Canada Employment and Immigration Commission, the Department of External Affairs and seven individuals from the private sector. In addition, the representative in Canada of the United Nations High Commissioner for Refugees is an ex officio member but has no vote. The Committee received more than 1,500 claims during 1980 and the figure for 1981 was expected to exceed 2,500. At the time of the Press Release 2,080 claims had been received in 1981 of which 407 (31%) had been considered valid by the Committee.

[18]See s.47(2). The combined effect of this section and sections 4(2), (6), 19 and 27 enables the adjudicator to make such an order against a Convention refugee who has committed, or is considered likely to commit a crime (for which a maximum term of imprisonment of ten years or more may be imposed) or engage in subversion against any government.

[19]s.128(1) of the Immigration Act, 1976, repealed the Immigration Appeal Board Act, op. cit., but s.125(1) reconstituted the Board itself and declared it to be the same as before. See Grey, "The New Immigration Law," op. cit., at pp. 106-7.

[20]R.S.C. 1970, (2nd Supp.), c.10.

[21]C.J. Wydrzynski, "Refugees and the Immigration Act" (1979), 25 McGill L.J., p. 154, at p. 167.

[22][1980] 2 F.C. 316 (T.D.).

[23]Ibid., at p. 323.

[24]See, e.g., Tapia v. M.E.I. [1979] 2 F.C. 468 (C.A.); Villaroel v. M.E.I. (1979) 31 N.R. 50 (C.A.); Saraos v. M.E.I. (1981) 36 N.R. 305 (C.A.); Colima v. M.E.I. (1981) 36 N.R. 313 (C.A.); Brannson v. M.E.I. (No. 2) (1980) 36 N.R. 315 (C.A.); Astudillo v. M.E.I. A-650-78 October 5, 1979 (C.A.) (unreported); Mohamed Ali v. M.E.I. A-777-80 May 4, 1981 (C.A.) (unreported); Musial v. M.E.I. A-898-80 June 12, 1981 (C.A.) (unreported); Perez v. M.E.I. [1981] 1 F.C. 753 (C.A.).

[25]Villaroel v. M.E.I., op. cit.

[26]Ibid., at p. 53.

[27][1980] 2 F.C. 302 (C.A.).

[28]Villaroel v. M.E.I., op. cit.

[29][1981] 1 F.C. 211 (C.A.).

[30]Federal Court Act, op. cit, s.28(1).

[31][1979] 1 S.C.R. 495.

[32]Ibid., at p. 504.

[33]Immigration Act, 1976, op. cit., s.45(1).

[34]Ibid., s.45(6).

[35]Brempong v. M.E.I., op. cit., at p. 217 per Urie J.

[36][1978] 1 S.C.R. 470.

[37]R.S.C. 1970, c.I-2.

[38]M.M.I. v. Hardayal, op. cit., at pp. 478-479.

[39]See De Smith, Judicial Review, op. cit., at p. 179, ". . . the courts should not fly in the face of a clearly evinced parliamentary intention to exclude the operation of the [audi alteram partem] rule."

[40]Immigration Appeal Board Act, op. cit. The only difference is that the Immigration Act, 1976, s.71(1) refers to an "application" and not an "appeal".

[41]This is evident from reports of the proceedings of the Parliamentary Commitee considering the Immigration Bill: House of Commons 30th Parl. Sess. 2, Standing Committee on Labour, Manpower and Immigration Proceedings, No. 49, pp. 19-31.

[42]Immigration Act, 1976, op. cit., s.84: "An appeal lies to the Federal Court of Appeal on any question of law, including a question of jurisdiction, from a decision of the Board on an appeal under this Act. . . ." (Emphasis added).

[43]See, e.g., Re Leszczynski (1975) 10 I.A.C. 283 and Re Morcinek (1976) 11 I.A.C. 214.

[44]J.V. Scott appearing before the Parliamentary Committee considering the Immigration Bill, op. cit., as quoted in Report of the Task Force on Immigration Practices and Procedures: The Refugee Status Determination Process (1981), at p. 67.

[45]Immigration Appeal Board Act, op. cit.

[46](1973) 9 I.A.C. 72.

[47]Ibid., at p. 80. The emphasis is that of the Chairman.

[48](1974) 9 I.A.C. 323.

[49]Ibid., at p. 327.

[50]Cylien, op. cit.

[51]M.M.I. v. Fuentes [1974] 2 F.C. 331, at p. 334, n.2 (C.A.).

[52](1980) 30 N.R. 316. Pratte and Beetz JJ. concurred in the dissent.

[53]Ibid., at p. 335. The emphasis is that of Pigeon J.

[54]Quaere whether, in the absence of s.71(4), the Board could be forced to give its reasons under the duty of acting fairly. In R. v. Gaming Board for Great Britain, Ex parte Benaim and Khaida [1970] 2 Q.B. 417, at p. 431 Lord Denning thought that the Gaming Board, though under such a duty, need not give reasons in as much as it was, like the Canadian Immigration Appeal Board, only required to form an opinion. However, in Taabea and Brempong v. Refugee Status Advisory Committee et al. [1980] 2 F.C. 316, the Trial Division of the Federal Court held that the Minister was required to give reasons for his decisions; not to do so would be "unfair." See infra.

[55]Lugano v. M.M.I. [1976] 2 F.C. 438 (C.A.).

[56]Maslej v. M.M.I. [1977] 1 F.C. 194 (C.A.).

[57][1976] 1 S.C.R. 376.

[58](1980) 34 N.R. 237. Motion for leave to appeal to the Supreme Court of Canada was granted October 20, 1980; 34 N.R. 347. Judgment was reserved on May 13, 1982.

[59]Ibid., at p. 239. The emphasis is that of Pratte J.

[60](1979) 31 N.R. 50.

[61]Ibid., at p. 55, per Pratte J.

[62]Kwiatkowski, op. cit.

[63]Ibid., at p. 240.

[64]Ministry of National Revenue v. Lybrand, op. cit.

[65]Ibid., at p. 504.

[66]Prata v. M.M.I., op. cit.

[67]Ibid., p. 380.

[68]See R. v. Governor of Pentonville Prison, Ex parte Azam [1973] 2 All E.R. 741, at p. 747 per Lord Denning, M.R. and the cases there cited: Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch. 149, at p. 168 and R. v. Governor of Brixton Prison, Ex parte Soblen [1963] 2 Q.B. 243, at pp. 300-301.

[69]The reasoning of Martland J. in the Prata case was quoted by the Federal Court of Appeal in Maslej v. M.M.I., op. cit., at p. 196. by Urie J., where a refugee claim was in issue.

[70]Immigration Appeal Board Act, op. cit.

[71]M.M.I. v. Fuentes, op. cit.

[72][1981] 1 F.C. 259 (C.A.).

[73]Immigration Act, 1976, s.4(2).

[74]Boun-Leua v. M.E.I., op. cit., at p. 264.

[75][1977] 1 W.L.R. 766.

[76]Ibid., at p. 773. The cited passage is from Halsbury's Laws of England (1973), vol. 1, para. 66.

[77]Wade, "Some Anglo-Canadian Comparisons," op. cit., at p. 198.

[78][1980] 1 S.C.R. 602.

[79]Immigration Act, 1971, op. cit., s.19.

[80]Brempong v. M.E.I., op. cit.

[81]See supra, pp. 90-93.

[82][1967] 2 Q.B. 617.

[83]J.H. Grey, "The Duty to Act Fairly After Nicholson," (1979-80), 25 McGill L.J., p. 598. See also Mullan, "Fairness," op. cit., at p. 281, for an account of the development of the notion of fairness in Canada and Britain up to 1975.

[84][1979] 1 S.C.R. 311.

[85]Ibid., at p. 324.

[86]Ibid., at p. 325. "What rightly lies behind this emergence [of the notion of fairness] is the realization that the classification of statutory functions as judicial, quasi-judicial or administrative is often very difficult to say the least; and to endow some with procedural protection while denying others any at all would work injustice when the results of statutory decisions raise the same serious consequences for those adversely affected, regardless of the classification of the function in question."

[87]Martineau (No. 2), op. cit

[88]Ibid., at p. 623.

[89]Ibid., at p. 623.

[90]Ibid., at p. 629.

[91][1978] 1 S.C.R. 118.

[92]Judson, Ritchie, Pigeon, Beetz and de Grandpre JJ.

[93]Martineau (No. 1), op. cit., at p. 126 per Pigeon J. quoting s.28 of the Federal Court Act.

[94]Ibid.,at pp. 622-623.

[95]H.W.R. Wade, Administrative Law (1977), pp. 541-2.

[96]Martineau (No. 2), op. cit. Dickson and Pigeon JJ.

[97]Hosenball, op. cit.

[98]Ibid., at p. 630.

[99]In his minority opinion in Martineau (No. 1), op. cit., Laskin C.J.C. (Martland, Spence and Dickson JJ. concurring in the dissent) went so far as to hold not only that the Governor's regulations but also the Commissioner's directives were "law" made pursuant to s.29 of the Penitentiary Act, R.S.C. 1970, c.P-6. In their detailed procedural specificity, however, those directives differ greatly from the British immigration rules. See also R. v. Beaver Creek Correctional Camp, Ex parte McCaud [1969] 1 O.R. 373 (C.A.) where the Ontario Court of Appeal arrived at the same conclusion on the directives made pursuant to the Penitentiary Act, op. cit., (that a duty to act judicially could be evinced from them in certain circumstances) but were not prepared to view the directives as "law" in order to do so: "the Regulations complement and particularize the statute and together with it make up the legal requirements within and in compliance with which the Penitentiary Service is created and operates. The Commissioner to whom under the direction of the Minister is committed the control and management of the Service . . . is primarily an executive officer and as such the directives he makes . . . are part of the administrative process for which he is responsible." per curiam at p. 380. The majority of the Supreme Court in Martineau (No. 1) was not prepared to view the directives as "law" and, ipso facto, not prepared to evoke therefrom a duty to act judicially even though an individual's rights were affected.

[100]See Hoffman-La Roche Ltd. v. Delmar Chemical Ltd. [1965] S.C.R. 575; R. v. Quebec Labour Relations Board, Ex parte Komo Construction Inc. (1967) 1 D.L.R. (3d) 125; Quebec Labour Relations Board v. Canadian Ingersoll Rand Co. Ltd. et al. (1968) 1 D.L.R. (3d) 417.

[101]Hoffman-LaRoche Ltd. v. Delmar Chemical Ltd., op. cit.

[102]Kwiatkowski v. I.A.B., op. cit.

[103]Nicholson, op. cit., at pp. 327-328.

[104][1975] 1 W.L.R. 1686, at p. 1694, "that which fairness requires depends upon the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely afflicted by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing."

[105]Nicholson, op. cit., at p. 324.

[106]This was recommended by the Report of the Task Force on Immigration Practices and Procedures, The Refugee Status Determination Process (1981), op. cit., at p. 69, failing a more radical restructuring of the entire process which it advocated in Chapter 6. The latter would involve abolishing the present three-stage process of refugee determination and replacing it by a single body to hear and decide all refugee claims. It was suggested that the existing Refugee Status Advisory Committee be transformed to fulfil such a function which would eliminate the Board's "redetermination" role altogether.

[107]Brempong v. M.E.I., op. cit.

[108]Saraos v. M.E.I., op. cit.

[109]Ibid., at pp. 309-310.

[110]Taabea, op. cit.

[111]See, e.g., R. v. Gaming Board for Great Britain, Ex parte Benaim and Khaida, op. cit., at p. 431.

[112]See D.J. Mullan, "Natural Justice and Fairness - Substantive as well as Procedural Standards for the Review of Administrative Decision-Making?" (1982), 27 McGill L.J., p. 250. The author argues that the substantive content of fairness (traditionally described as the duty of reasonableness, impartiality and good faith and marking, in general, the limits of judicial toleration of executive action) has been left an open question by the Supreme Court. To date, in Nicholson and Martineau (No. 2), it has treated the concept as simply procedural.

[113]Taabea and Brempong v. Refugee Status Advisory Committee, op. cit.

[114]R. v. Race Relations Board, Ex parte Selvarajan, op. cit., per Lord Denning at p. 1694.

[115]Brempong v. M.E.I., op. cit.

[116]Ibid., at p. 213 per Urie J.: "With respect, I have grave doubts as to the propriety of requiring the Minister to give such reasons. However, that question is not one upon which we are called to make a decision in this application."

[117][1982] 1 F.C. 70 (C.A.).

[118]Ibid., at p. 71. See also Siclait v. M.E.I. No. T-5569-78 (T.D.) September 24, 1979 (unreported) and Echeverria v. M.E.I. et al. No. T-2366-80 (T.D.) May 22, 1981 (unreported).

CONCLUSION

The problem of the refugee is as old as time and remains one of the most pressing humanitarian concerns of the present day. The attitude of individual states to this problem, historically and until the present day, has consisted principally of an assertion of territorial supremacy involving the freedom to grant or refuse asylum at will. Only since the turn of the century has the international community evolved a corpus of norms of behaviour for states to adopt towards refugees. Yet, the aspirations of refugees reflected by these norms are in conflict with those of states holding zealously to their sovereignty. The amelioration of the problem, therefore, has depended on the extent to which states have been prepared voluntarily to cede an amount of their sovereignty by incorporating international obligations into their systems of municipal law. In this respect, Canada may take full credit for having committed herself statutorily to a clearly defined refugee policy and for having anchored the definition of Convention refugee in the text of the current Immigration Act.

A survey of British state policy has revealed that that country has maintained a refugee policy that has varied in generosity in proportion to the internal threat posed by the acceptance of large numbers of refugees, or the external threat to national security posed by aliens in general in time of war. Paradoxically, Britain exempted political and religious refugees from the terms of the Aliens Act, 1905, which was the first aliens legislation of modern times. But these provisions did not survive the exigencies of the First World War.

Since then, and especially since the Second World War and the dissolution of Empire, a series of increasingly exclusionary immigration statutes have been enacted.

In the interpretation of these statutes the courts have consistently shown a reluctance to tamper with the exercise of administrative discretion and extend to aliens the procedural protection and sense of fair play that applies to citizens. As regards refugees, this attitude has been justified by reference to the traditional view of asylum as being a privilege that may or may not be extended to them rather than a right to which they may lay claim. Indeed, it seems that territorial supremacy has been guarded more keenly by the courts on behalf of the state than by the state itself for, in 1969, the Labour Government of the day moved ahead of the courts in ensuring procedural fairness to aliens in the form of appeals from the decisions of immigration officers to adjudicators and thence to the Immigration Appeal Tribunal.

In view of what has gone before, it comes as no surprise that the British Parliament, on the one hand, has not seen fit to establish refugee provisions or procedures in its current Immigration Act, 1971, while the judiciary, on the other, has held that the immigration rules (wherein immigration officers are directed to exercise their discretion as regards refugees in conformity with Britain's international obligations) only have a tenuous existence as mere guidelines, departure from which does not constitute unfairness. The very fact that, under the 1971 Act, an adjudicator must allow an appeal, if the rules have not been followed, focusses attention on the difference between such rules and the genuine statutory refugee provisions in the Canadian

Immigration Act, 1976. It is apparent that, faced with a flood of refugees, the British Home Secretary may without difficulty revoke his rules altogether or substitute rules without refugee references. In such an eventuality, the fact that the courts may have regard to them in considering whether an officer has acted fairly or that an adjudicator must allow an appeal if the rules have not been followed is rendered valueless. Although the Act states that an appeal shall be allowed where the adjudicator is of the opinion that a discretion should have been exercised differently, the flimsy legal nature of the immigration rules means that appellate authorities may easily be bereft of the yardstick against which executive discretion is to be measured. While the administrative approach of the United Kingdom in fulfilment of its international obligations to refugees is fair today, whether it will remain so next month is a matter of conjecture.

By comparison, the Canadian Parliament has been considerably more brave. It has not only incorporated the 1951 Convention refugee definition but has also, in the same section of the Immigration Act, 1976, recognized the need

> to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted.[1]

It will be recalled that the British Immigration Appeal Tribunal in Secretary of State for the Home Department v. "Two Citizens of Chile" held that

> [the] United Nations Convention and the Universal Declaration of Human Rights cannot so far as the immigration appellate authority are concerned overrule the Immigration Act 1971 and the rules made thereunder. . . .[2]

As a consequence, when the United Nations High Commissioner for Refugees outlines basic requirements to which all parties to the Convention and Protocol should conform, such requirements clearly have far greater significance for Canada than for Britain. For the latter, any guidelines issued by the High Commissioner would merely be "of assistance in indicating the way in which the [British] Act and the Rules should be interpreted."[3] As against the former, however, any inconsistency with the Canadian immigration regulations may provide a refugee claimant with an argument that Canada is not fulfilling the international obligations to which it has statutorily committed itself. In fact, neither the 1951 Convention nor the Protocol lays down any procedure for determining refugee status.[4] However, the fact that Canada (unlike Britain) has made itself responsible for compliance with obligations to refugees necessitates lawyers for such claimants being fully conversant with changes that may occur from time to time both in the content of the immigration regulations and the High Commissioner's guidelines. For example, the most recent guidelines state:

> If the applicant is not recognized, he should be given a reasonable time to appeal for a reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.[5]

The 1981 Task Force Report on the refugee status determination process[6] noted that under previous Canadian immigration regulations a claimant who was the subject of a negative determination by the Minister had only seven days to apply to the Immigration Appeal Board for a redetermination.[7] The rules have now been amended and extend the time limit to fifteen days.[8] However, as the Task Force Report

points out, "even fifteen days is short by normal standards. The application for redetermination is not comparable to a mere notice of appeal. . . . In these circumstances, thirty days would be a more appropriate time limit."[9]

At present, however, the specific procedures for determining refugee status to which Canada has committed itself conform with the general principles set out in the High Commissioner's guidelines as the Task Force conceded. Moreover, it would be wrong to deny their overall procedural fairness. Criticism may be levelled, however, at the complexity of the refugee status determination procedure and the fact that it may be difficult for a claimant to put his case in person before an official, or even the Immigration Appeal Board, having the authority to rule on it. Such complexity has, at least, led to the academic advantage of allowing room for argument that the concept of fairness ought to be applied so as to render reviewable the administrative stages of this determination process. This argument has been judicially rejected, as might be expected, given the historical deference of both the Canadian and British courts to Parliamentary intention in this context as well as their attitude towards aliens' claims to have a right to be heard. Nevertheless, procedural fairness has had one practical, though lesser, advantage since it enabled the Federal Court to require the Minister to give to a claimant the reasons for his determination that the latter was not a Convention refugee. Such reasons now accompany each notice of a negative determination.[10]

The 1981 Task Force Report on the refugee status determination process, while agreeing that Canada had done more than meet her

international legal obligations under the Refugee Convention, not only took issue with the complexity of the determination process but also with the fact that the refugee claimant is not provided an opportunity to be heard orally by the decision-maker. It recommended legislative amendment whereby the Refugee Status Advisory Committee would be empowered to grant hearings to refugee claimants in any case in which it is not willing to make a positive recommendation to the Minister on the basis of the transcript. Failing such a comprehensive statutory change, it was of the opinion that the Act should at least be amended to permit oral hearings by the Immigration Appeal Board for all but frivolous applications. It is not clear whether such basic amendments to the carefully wrought existing scheme will find favour with the government. However, the Minister in the Guidelines to the Refugee Status Advisory Committee[11] has accepted the recommendations that the benefit of the doubt should be given by the Committee in relation to the credibility of claimants and also in relation to the application of the refugee definition to particular cases. A similar recommendation that the Board adopt the same standard of in dubio pro reo when deciding whether to allow an application for redetermination to proceed cannot be so easily put into effect. This will require legislative attention to the wording of section 71(1) or a Supreme Court reversal of the decision in Kwiatkowski. Procedural fairness is at the heart of the matter. As the Task Force Report concluded:

> Perhaps the most detailed protections for the fairness of hearings are to be found in our criminal process. . . . It is seen to be crucial that the criminal trial be fair because of the seriousness of the consequences of a mistake. If that criterion is applied to the refugee determination process then a very high standard, indeed, is warranted. The death penalty is no longer a consequence of the criminal process in Canada. However, it may be a consequence of an erroneous refugee determination.[12]

NOTES: CONCLUSION

[1]Immigration Act, 1976, s.3(g).

[2]"Two Citizens of Chile," op. cit., at p. 42 per curiam. See supra, p. 27.

[3]Ibid., at p. 42.

[4]See, e.g., Haitian Refugee Center v. Smith (1982) 21 International Legal Materials 603. In this recent class action initiated on behalf of over 4,000 Haitians in Florida seeking political asylum in the United States, the court acknowledged that the procedure for determining refugee status lay within the jurisdiction of individual states: "Recognizing the existence of an entitlement in the right to petition for political asylum does not define the particulars of what the government may or may not do in making a decision on that petition"; per Hill, Circuit Judge, at p. 614. In the instant case, however, it was alleged that a system of accelerated processing had resulted in grossly inadequate legal representation for the Haitian claimants (only twelve attorneys were available for the thousands of claims being processed) and an effective denial of the right to petition for asylum. The Court of Appeals agreed: "If this commitment by the United States [to the 1951 Convention and Protocol] is to have substance at all, it must mean at least that the alien is to be allowed the opportunity to seek political asylum, even if the grant of that benefit is discretionary. Recognizing this, in 1974 [the Immigration and Naturalization Service] . . . establish[ed] the machinery by which the alien is permitted to petition for political asylum in the United States. . . . Congress, through a designated agency, chose to implement the policy expressed in the Protocol by creating in the alien the right to submit and substantiate a claim of risk of persecution should he be deported to his country." Ibid., at p. 614.

[5]U.N.H.C.R., Collection of Notes Presented to the Committee of the Whole on International Protection 1977-1980, Doc. HCR/PRO/3, para. 16(f).

[6]Report of the Task Force on Immigration Practices and Procedures, The Refugee Status Determination Process (1981), at p. 64.

[7]S.40, Immigration Regulations, 1978, SOR/78-172 (1978), 112 Canada Gazette, Part II, p. 757.

[8]S.40(1), Immigration Regulations, 1978, amendment, SOR/80-601 (1980), 114 Canada Gazette, Part II, p. 2675.

[9]Report of the Task Force on Immigration Practices, op. cit., at p. 64.

[10]Press Release 79-42, Minister of Employment and Immigration, November 5, 1979, as quoted in Report of the Task Force on Immigration Practices, op. cit., at p. 109, n. 62.

[11]New Refugee Status Advisory Committee Guidelines on Refugee Definition and Assessment of Credibility, (1982).

[12]Report of the Task Force on Immigration Practices, op. cit., at p. 43.

BIBLIOGRAPHY

Books & Periodicals

Cobbett, William. Parliamentary History of England from The Earliest Period To The Year 1803. Vol. 30. London: Longman, Hurst, Rees, etc., 1817.

De Smith, S.A. Constitutional and Administrative Law. 3rd ed. Harmondsworth, England; New York: Penguin Books, 1977.

De Smith, S.A. "Immigration Act, 1971," 30 C.L.J. p. 1, (1972).

De Smith, S.A. Judicial Review of Administrative Action. 4th ed. London: Stevens; Agincourt, Ontario: Carswell, 1980.

Dirks, Gerald E. Canada's Refugee Policy: Indifference or Opportunitism? Montreal and London: McGill-Queen's University Press, 1977.

Dworkin, R.M. "The Model of Rules," 35 U. Chi. L.R. p. 33, (1967).

Farmer, J.A. Tribunals and Government. London: Weidenfeld and Nicholson, 1974.

Forsyth, William. Cases and Opinions on Constitutional Law. London: Stevens and Haynes, 1869, [Westmead, England: Gregg, 1971].

Gartner, L.P. The Jewish Immigrant in England, 1870-1914. London: Allen and Unwin, 1960.

Goodwin-Gill, G.S. "The Limits of the Power of Expulsion in Public International Law," 47 B.Y.I.L. p. 55, (1974).

Gotlieb, A.E. "Canada and the Refugee Question in International Law," 13 C.Y.I.L. p. 3, (1975).

Grahl-Madsen, Atle. The Status of Refugees in International Law. Vol. 2. Leyden: A.W. Sijthoff, 1972.

Grey, J.H. "The Duty to Act Fairly after Nicholson," 25 McGill L.J. p. 598, (1979-80).

Grey, J.H. "The New Immigration Law: A Technical Analysis," 10 Ott. L.R. p. 103, (1978).

Hansen, M.L. and J.B. Brebner. The Mingling of the Canadian and American Peoples. New Haven: Yale University Press, 1940.

Haycraft, T.W. "Alien Legislation and the Prerogative of the Crown," 13 L.Q.R. p. 165, (1896).

Hepple, B.A. "Aliens and Administrative Justice: The Dutschke Case," 34 M.L.R. p. 501, (1971).

Holdsworth, W.S. A History of English Law. Vol. 9. London: Methuen and Co. Ltd., 1926.

Hopkins, J. "Entry to United Kingdom of Alien - Natural Justice," 28 C.L.J. p. 9, (1970).

Landa, M.J. The Alien Problem and Its Remedy. London: P.S. King, 1911.

Lauterpacht, E. "The Contemporary Practice of the United Kingdom in the Field of International Law - Survey and Comment VI," 7 I.C.L.Q. p. 514, (1958).

Law Union of Ontario, The Immigrants' Handbook: A Critical Guide. Montreal: Black Rose, 1981.

Macdonald, I.A. The New Immigration Law. London: Butterworths, 1972.

May, Thomas Erskine. Constitutional History of England since the accession of George Third, 1760-1860. Vol. 2. New York: W.J. Widdleton, 1875.

Morgenstern, F. "The Right of Asylum," 26 B.Y.I.L. p. 327, (1949).

Mullan, D.J. "Fairness: The New Natural Justice," 25 U.T.L.J. p. 281, (1975).

Mullan, D.J. "Natural Justice and Fairness - Substantive as well as Procedural Standards for the Review of Administrative Decision-Making?", 27 McGill L.J. p. 250, (1982).

O'Higgins, P. "Disguised Extradition: The Soblen Case," 27 M.L.R. p. 521, (1964).

Oppenheim, L. and H. Lauterpacht. International Law. 8th ed. Vol. 1. London: Longmans, Green and Co. Ltd., 1955.

Phillips, O. Hood. Constitutional and Administrative Law. 6th ed. London: Sweet and Maxwell, 1978.

Porter, B. The Refugee Question in mid-Victorian Politics. Cambridge; New York: Cambridge University Press, 1979.

Reville, Andre. "L'abjuratio regni: histoire d'un institution anglaise," 50 Revue Historique 1, (1892).

Rymer, Thomas. Foedera, Conventiones, Literae. . . . [London]: A. and J. Churchill, [1704].

Scott, J.V. "Immigration Inquiries and Appeals from Orders of Deportation," Law Society of Upper Canada, Special Lectures; Administrative Practice and Procedure, (1971).

Sinha, S. Prakash. Asylum and International Law. The Hague: M. Nijhoff, 1971.

Thornbury, C.H.R. "Dr. Soblen and the Alien Law of the United Kingdom," 12 I.C.L.Q. p. 414, (1963).

Wade, H.W.R. Administrative Law. 4th ed. Oxford: Clarendon Press, 1977.

Wade, H.W.R. "Some Anglo-Canadian Comparisons and Contrasts," Proceedings of the Administrative Law Conference. Faculty of Law, University of British Columbia, October 18 and 19, 1979, p. 197, (1979).

Wydrzynski, C.J. Civil Liberties of Aliens in the Canadian Immigration Process. Thesis submitted to Osgoode Hall Law School for Master of Laws, March 1976.

Wydrzynski, C.J. "Refugees and the Immigration Act," 25 McGill L.J. p. 154, (1979).

Miscellaneous Reports and Papers

Canadian Immigration Policy: White Paper on Immigration. Ottawa: Government of Canada, October, 1966.

Green Paper on Immigration Policy. Ottawa: Government of Canada, 1974.

Highlights from Green Paper on Immigration and Population. Ottawa: Office of the Minister of Manpower and Immigration, 1974.

New Refugee Status Advisory Committee Guidelines on Refugee Definition and Assessment of Credibility. Ottawa: Office of the Minister of Employment and Immigration, February 20, 1982.

Report of the Royal Commission on Alien Immigration, 1903. B.S.P. Vol. 9. London: House of Commons, 1903.

Report of the Select Committee on Extradition of the House of Commons, 1868. B.S.P. Vol. 7. London: House of Commons, 1867-68.

Report of the Task Force on Immigration Practices and Procedures . . . September, 1980: The Refugee Status Determination Process. Ottawa: Office of the Minister of Employment and Immigration, November, 1981.

Report of the Wilson Committee on Immigration Appeals. Cmnd. 3387. London: Her Majesty's Stationery Office, 1967.

Report to Parliament: The Special Joint Committee of the Senate and of the House of Commons on Immigration Policy. Ottawa: Government of Canada, 1975.

TABLE OF CASES

Amratlal Dahyabhai Patel et al. v. Chief Immigration Officer, London (Heathrow) Airport and the Secretary of State for the Home Department, [1977] Imm. A.R. 116 (C.A.).

Astudillo v. M.E.I. A-650-78 October 5, 1979 (C.A.), unreported.

Attorney-General for Canada v. Attorney-General for Ontario. (Labour Conventions) [1937] A.C. 326.

Attorney-General for Canada v. Cain [1906] A.C. 542.

Board of Education v. Rice [1911] A.C. 179.

Boulis v. M.M.I. [1974] S.C.R. 875.

Boun-Leua v. M.E.I. [1981] 1 F.C. 259 (C.A.).

Brannson v. M.E.I. (No. 2) (1980) 36 N.R. 315 (C.A.).

Breen v. Amalgamated Engineering Union [1971] 2 Q.B. 175.

Brempong v. M.E.I. [1981] 1 F.C. 211 (C.A.).

C. v. E. (1946) 62 T.L.R. 326.

Colima v. M.E.I. (1981) 36 N.R. 313 (C.A.).

Cooper v. Wandsworth Board of Works (1863) 14 C.B. (N.S.) 180.

Cylien (1973) 9 I.A.C. 72.

D.R. Fraser and Co. Ltd. v. Minister of National Revenue [1949] A.C. 24.

Diaz-Fuentes (1974) 9 I.A.C. 323.

Echeverria v. M.E.I. et al. No. T-2366-80 (T.D.) May 22, 1981 (unreported).

Ernewein v. M.E.I. (1980) 103 D.L.R. (3d) 1 (S.C.C.).

Guay v. Lafleur [1965] S.C.R. 12.

Grunwick Processing Laboratories Ltd. v. Advisory, Conciliation and Arbitration Service [1978] A.C. 655.

Hilario v. M.M.I. [1978] 1 F.C. 697 (C.A.).

Hoffman-La Roche Ltd. v. Delmar Chemical Ltd. [1965] S.C.R. 575.

Kwiatkowski v. Immigration Appeal Board (1980) 34 N.R. 237.

Local Government Board v. Arlidge [1915] A.C. 120.

Lugano v. M.M.I. [1976] 2 F.C. 438 (C.A.).

MacDonald v. Vapour Canada Ltd. (1976) 66 D.L.R. (3d) 1.

Maldonado v. M.E.I. [1980] 2 F.C. 302 (C.A.).

Martin v. M.M.I. [1972] F.C. 844 (C.A.).

Martineau and Butters v. The Matsqui Institution Inmate Disciplinary Board [1978] 1 S.C.R. 118.

Martineau v. Matsqui Institution Disciplinary Board [1980] 1 S.C.R. 602.

Maslej v. M.M.I. [1977] 1 F.C. 194 (C.A.).

Mensah v. M.E.I. [1982] 1 F.C. 70 (C.A.).

M.E.I. v. Hudnik [1980] 1 F.C. 180 (C.A.).

M.M.I. v. Fuentes [1974] 2 F.C. 331 (C.A.).

M.M.I. v. Hardayal [1978] 1 S.C.R. 470.

Ministry of National Revenue v. Lybrand [1979] 1 S.C.R. 495.

Mohamed Ali v. M.E.I. A-777-80 May 4, 1981 (C.A)., unreported.

Musgrove v. Chung Teeong Toy [1891] A.C. 272.

Musial v. M.E.I. A-898-80 June 12, 1981 (C.A.), unreported.

Nakkuda Ali v. Jayaratne [1951] A.C. 66.

Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police [1979] 1 S.C.R. 311.

Padfield v. Minister of Agriculture, Fisheries and Food [1968] A.C. 997.

Pan-American World Airways Inc. v. Department of Trade [1976] 1 Lloyd's Rep. 25.

Pearlberg v. Varty [1971] 1 W.L.R. 728.

Pearson v. Immigration Appeal Tribunal [1978] Imm. A.R. 212.

Perez v. M.E.I. [1981] 1 F.C. 753 (C.A.).

Poll v. Lord Advocate [1899] 1 F. (Ct. of Sess.).

Post Office v. Estuary Radio Ltd. [1968] 2 Q.B. 740.

Prata v. M.M.I. [1976] 1 S.C.R. 376.

Pringle v. Fraser [1972] S.C.R. 821.

Quebec Labour Relations Board v. Canadian Ingersoll Rand Co. Ltd. et al. (1968) 1 D.L.R. (3d) 417.

R. v. Alamazoff [1919] 47 D.L.R. 533.

R. v. Beaver Creek Correctional Camp, Ex parte McCaud [1969] 1 O.R. 373 (C.A.).

R. v. Chief Immigration Officer, Ex parte Salamat Bibi [1976] 1 W.L.R. 979.

R. v. Chief Immigration Officer, Lympne Airport, Ex parte Amrik Singh [1969] 1 Q.B. 333 (D.C.).

R. v. Criminal Injuries Compensation Board, Ex parte Lain [1967] 2 Q.B. 864.

R. v. Criminal Injuries Compensation Board, Ex parte Schofield [1971] 1 W.L.R. 926.

R. v. Department of Manpower and Immigration, Ex parte Hosin (1970) 12 D.L.R. (3d) 704.

R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee (1920) Co. Ltd. [1924] 1 K.B. 171.

R. v. Fine (1912) 77 J.P. 79.

R. v. Friedman (1914) 10 Cr. App. Rep. 72.

R. v. Gaming Board, Ex parte Benaim and Khaida [1970] 2 Q.B. 417.

R. v. Governor of Brixton Prison, Ex parte Bloom (1920) 124 L.T.R. 375.

R. v. Governor of Brixton Prison and Another, Ex parte Enahoro [1963] 2 All E.R. 477.

R. v. Governor of Brixton Prison, Ex parte Sarno [1916] 2 K.B. 742.

R. v. Governor of Brixton Prison, Ex parte Soblen [1962] 3 W.L.R. 1154; [1963] 2 Q.B. 243.

R. v. Governor of Pentonville Prison, Ex parte Azam [1973] 2 W.L.R. 949.

R. v. Grunspan (1913) 8 Cr. App. Rep. 269.

R. v. Home Secretary, Ex parte Bhajan Singh [1976] Q.B. 198.

R. v. Home Secretary, Ex parte Duc de Chateau Thierry (1917) 116 L.T.R. 226.

R. v. Home Secretary, Ex parte Mughal [1974] 1 Q.B. 313.

R. v. Leman Street Police Station Inspector, Ex parte Venicoff [1920] 3 K.B. 72.

R. v. Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators Association [1972] 2 Q.B. 299.

R. v. Quebec Labour Relations Board, Ex parte Komo Construction Inc. (1967) 1 D.L.R. (3d) 125.

R. v. Race Relations Board, Ex parte Selvarajan [1975] 1 W.L.R. 1686.

R. v. Secretary of State for Home Affairs, Ex parte Harnaik Singh [1969] 1 W.L.R. 835.

R. v. Secretary of State for Home Affairs, Ex parte Hosenball [1977] 1 W.L.R. 766.

R. v. Secretary of State for Home Affairs, Ex parte Soblen, [1962] 3 W.L.R. 1145.

R. v. Secretary of State for the Home Department, Ex parte Thakrar [1974] 1 Q.B. 684.

R. v. Spalding [1955] 5 D.L.R. 374.

R. v. Superintendent of Chiswick Police Station, Ex parte Sacksteder [1918] 1 K.B. 578.

R. v. Zausmer (1911) 7 Cr. App. Rep. 41.

Re Arrow River and Tributaries Slide and Bloom Co. [1932] S.C.R. 495.

Re Edery (1969) 70 W.W.R. 553.

Re H.K. (An Infant) [1967] 2 Q.B. 617.

Re Hanna (1957) 8 D.L.R. (2d) 566.

Re Leszczynski (1975) 10 I.A.C. 283.

Re Morcinek (1976) 11 I.A.C. 214.

Re Mohamed Arif (An Infant) [1968] 1 Ch. 643. (D.C.).

Re Pergamon Press Ltd. [1971] Ch. 388.

Ridge v. Baldwin [1964] A.C. 40.

Russell v. Duke of Norfolk [1949] 1 All E.R. 109.

Saraos v. M.E.I. (1981) 36 N.R. 305 (C.A.).

Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch. 149.

Secretary of State for the Home Department v. Croning [1972] Imm. A.R. 51.

Secretary of State for the Home Department v. Glean [1972] Imm. A.R. 84.

Secretary of State for the Home Department v. "Two Citizens of Chile" [1977] Imm. A.R. 36.

Siclait v. M.E.I. No. T-5569-78 (T.D.) September 24, 1979 (unreported).

Sparrow v. M.M.I. [1977] 2 F.C. 403 (T.D.).

Taabea and Brempong v. Refugee Status Advisory Committee et al. [1980] 2 F.C. 316 (T.D.).

Tapia v. M.E.I. [1979] 2 F.C. 468 (C.A.).

Ut Nan Lam v. M.M.I. [1978] 2 F.C. 3 (T.D.).

Villaroel v. M.E.I. (1979) 31 N.R. 50 (C.A.).

TABLE OF STATUTES

Alien Act, 1793, 33 Geo. 3, c.4.

Alien Act, 1802, 42 Geo. 3, c.92.

Alien Act, 1814, 54 Geo. 3, c.155.

Alien Act, 1816, 56 Geo. 3, c.86.

Alien Act, 1826, 7 Geo. 4, c.54.

Aliens Act, 1848, 11 and 12 Vict., c.20.

Aliens Act, 1905, 5 Edw. 7, c.13.

Alien Labour Act, 1897, S.C. 60 and 61 Vict., c.11.

Aliens Restriction Act, 1914, 4 and 5 Geo. 5, c.12.

Aliens Restriction (Amendment) Act, 1919, 9 and 10 Geo. 5, c.92.

An Act for Continuing and Reviving Divers Statutes, and Repealing of Divers Others, 21 Jac. 1, c.28.

An Act for the Naturalisation of Foreign Protestants, (1708), 7 Anne c.5.

An Act to Amend the Immigration Act of 1869, S.C. 1872, c.28.

An Act to Amend the Immigration Act, 1919, S.C. 1919, c.25.

Chinese Immigration Act, S.C. 1885, c.71.

Commonwealth Immigrants Act, 1962, 10 and 11 Eliz. 2, c.21.

Extradition Act, 1870, 33 and 34 Vict., c.52.

Federal Court Act, R.S.C. 1970, c.10 (2nd Supp.).

Fugitive Offenders Act, 1881, 44 and 45 Vict., c.69.

Fugitive Offenders Act, 1967, 15 and 16 Eliz. 2, c.68.

Immigration Act, 1869, S.C. 1869, c.10.

Immigration Act, 1906, R.S.C. 1906, c.93.

Immigration Act, 1910, S.C. 1910, c.27.

Immigration Act, 1952, R.S.C. 1970, c.I-2.

Immigration Act, 1971, 19 and 20 Eliz. 2, c.77.

Immigration Act, 1976, S.C. 1976-77, c.52.

Immigration Appeal Board Act, 1967, R.S.C. 1970, c.I-3 as amended by S.C. 1973, c.27.

Immigration Appeals Act, 1969, 17 and 18 Eliz. 2, c.21.

Penitentiary Act, R.S.C. 1970, c.P-6.

Prevention of Crime (Ireland) Act, 1882, 45 and 46 Vict., c.25.

Registration of Aliens Act, 1836, 6 and 7 Will. 4, c.11.

Statutory Instruments Act, 1946, 9 and 10 Geo. 6, c.36.

An Act to amend and replace the present immigration laws, to make certain related changes in the citizenship law and enable help to be given to those wishing to return abroad, and for purposes connected therewith.
[28th October 1971]

Words of enactment omitted under authority of Statute Law Revision Act 1948 (c. 62), s. 3
Functions of a medical officer of health now exercisable by chief administrative medical officer of a Health and Social Services Board (N.I.): S.R. & O. (N.I.) 1973/256

PART I

REGULATION OF ENTRY INTO AND STAY IN UNITED KINGDOM

General principles.

1.—(1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act; and indefinite leave to enter or remain in the United Kingdom shall, by virtue of this provision, be treated as having been given under this Act to those in the United Kingdom at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).

(3) Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as "the common travel area".

(4) The rules laid down by the Secretary of State as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of

study, or as visitors, or as dependants of persons lawfully in or entering the United Kingdom.

(5) The rules shall be so framed that Commonwealth citizens settled in the United Kingdom at the coming into force of this Act and their wives and children are not, by virtue of anything in the rules, any less free to come into and go from the United Kingdom than if this Act had not been passed.

Statement of right of abode, and related amendments as to citizenship by registration.

2.—(1) A person is under this Act to have the right of abode in the United Kingdom if—

(*a*) he is a citizen of the United Kingdom and Colonies who has that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any of the Islands; or

(*b*) he is a citizen of the United Kingdom and Colonies born to or legally adopted by a parent who had that citizenship at the time of the birth or adoption, and the parent either—

(i) then had that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any of the Islands; or

(ii) had been born to or legally adopted by a parent who at the time of that birth or adoption so had it; or

(*c*) he is a citizen of the United Kingdom and Colonies who has at any time been settled in the United Kingdom and Islands and had at that time (and while such a citizen) been ordinarily resident there for the last five years or more; or

(*d*) he is a Commonwealth citizen born to or legally adopted by a parent who at the time of the birth or adoption had citizenship of the United Kingdom and Colonies by his birth in the United Kingdom or in any of the Islands.

(2) A woman is under this Act also to have the right of abode in the United Kingdom if she is a Commonwealth citizen and either—

(*a*) is the wife of any such citizen of the United Kingdom and Colonies as is mentioned in subsection (1)(*a*), (*b*) or (*c*) above or any such Commonwealth citizen as is mentioned in subsection (1)(*d*); or

(*b*) has at any time been the wife—

(i) of a person then being such a citizen of the United Kingdom and Colonies or Commonwealth citizen; or

(ii) of a British subject who but for his death would on the date of commencement of the British Nationality Act 1948 have been such a citizen of the United Kingdom and Colonies as is mentioned in subsection (1)(*a*) or (*b*);

1948 c. 56.

but in subsection (1)(*a*) and (*b*) above references to registration as a citizen of the United Kingdom and Colonies shall not, in the case of

a woman, include registration after the passing of this Act under or by virtue of section 6(2) (wives) of the British Nationality Act 1948 unless she is so registered by virtue of her marriage to a citizen of the United Kingdom and Colonies before the passing of this Act. 1948 c. 56.

(3) In relation to the parent of a child born after the parent's death, references in subsection (1) above to the time of the child's birth shall be replaced by references to the time of the parent's death; and for purposes of that subsection—

(*a*) "parent" includes the mother of an illegitimate child; and

(*b*) references to birth in the United Kingdom shall include birth on a ship or aircraft registered in the United Kingdom, or on an unregistered ship or aircraft of the Government of the United Kingdom, and similarly with references to birth in any of the Islands; and

(*c*) references to citizenship of the United Kingdom and Colonies shall, in relation to a time before the year 1949, be construed as references to British nationality and, in relation to British nationality and to a time before the 31st March 1922, "the United Kingdom" shall mean Great Britain and Ireland; and

(*d*) subject to section 8(5) below, references to a person being settled in the United Kingdom and Islands are references to his being ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain.

(4) In subsection (1) above, any reference to registration in the United Kingdom shall extend also to registration under arrangements made by virtue of section 8(2) of the British Nationality Act 1948 (registration in independent Commonwealth country by United Kingdom High Commissioner), but, in the case of a registration by virtue of section 7 (children) of that Act, only if the registration was effected before the passing of this Act.

(5) The law with respect to registration as a citizen of the United Kingdom and Colonies shall be modified as provided by Schedule 1 to this Act.

(6) In the following provisions of this Act the word "patrial" is used of persons having the right of abode in the United Kingdom.

General provisions for regulation and control.

3.—(1) Except as otherwise provided by or under this Act, where a person is not patrial—

(*a*) he shall not enter the United Kingdom unless given leave to do so in accordance with this Act;

(*b*) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(*c*) if he is given a limited leave to enter or remain in the United Kingdom, it may be given subject to conditions restricting his employment or occupation in the United Kingdom, or requiring him to register with the police, or both.

(2) The Secretary of State shall from time to time (and as soon as may be) lay before Parliament statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances; and section 1(4) above shall not be taken to require uniform provision to be made by the rules as regards admission of persons for a purpose or in a capacity specified in section 1(4) (and in particular, for this as well as other purposes of this Act, account may be taken of citizenship or nationality).

If a statement laid before either House of Parliament under this subsection is disapproved by a resolution of that House passed within the period of forty days beginning with the date of laying (and exclusive of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days), then the Secretary of State shall as soon as may be make such changes or further changes in the rules as appear to him to be required in the circumstances, so that the statement of those changes be laid before Parliament at latest by the end of the period of forty days beginning with the date of the resolution (but exclusive as aforesaid).

(3) In the case of a limited leave to enter or remain in the United Kingdom,—

(*a*) a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave shall cease to apply; and

(*b*) the limitation on and any conditions attached to a person's leave may be imposed (whether originally or on a variation) so that they will, if not superseded, apply also to any subsequent leave he may obtain after an absence from the United Kingdom within the period limited for the duration of the earlier leave.

(4) A person's leave to enter or remain in the United Kingdom shall lapse on his going to a country or territory outside the common travel area (whether or not he lands there), unless within the period for which he had leave he returns to the United Kingdom in circumstances in which he is not required to obtain leave to enter;

but, if he does so return, his previous leave (and any limitation on it or conditions attached to it) shall continue to apply.

(5) A person who is not patrial shall be liable to deportation from the United Kingdom—

(*a*) if, having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave; or

(*b*) if the Secretary of State deems his deportation to be conducive to the public good; or

(*c*) if another person to whose family he belongs is or has been ordered to be deported.

(6) Without prejudice to the operation of subsection (5) above, a person who is not patrial shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

(7) Where it appears to Her Majesty proper so to do by reason of restrictions or conditions imposed on citizens of the United Kingdom and Colonies when leaving or seeking to leave any country or the territory subject to the government of any country, Her Majesty may by Order in Council make provision for prohibiting persons who are nationals or citizens of that country and are not patrial from embarking in the United Kingdom, or from doing so elsewhere than at a port of exit, or for imposing restrictions or conditions on them when embarking or about to embark in the United Kingdom; and Her Majesty may also make provision by Order in Council to enable those who are not patrial to be, in such cases as may be prescribed by the Order, prohibited in the interests of safety from so embarking on a ship or aircraft specified or indicated in the prohibition.

Any Order in Council under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) When any question arises under this Act whether or not a person is patrial, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

(9) A person seeking to enter the United Kingdom and claiming to be patrial by virtue of section 2(1)(*c*) or (*d*) or section 2(2) above shall prove it by means of such certificate of patriality as may be specified in the immigration rules, unless in the case of a woman claiming to be patrial by virtue of section 2(2) she shows that she is a citizen of the United Kingdom and Colonies and is patrial by virtue of section 2(2) apart from any reference therein to section 2(1)(*c*) or (*d*).

S. 3(5) restricted by S.I. 1972/1583

Administration of control.

4.—(1) The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3)(*a*) (whether as regards duration or conditions), shall be exercised by the Secretary of State; and, unless otherwise allowed by this Act, those powers shall be exercised by notice in writing given to the person affected, except that the powers under section 3(3)(*a*) may be exercised generally in respect of any class of persons by order made by statutory instrument.

(2) The provisions of Schedule 2 to this Act shall have effect with respect to—

(*a*) the appointment and powers of immigration officers and medical inspectors for purposes of this Act;

(*b*) the examination of persons arriving in or leaving the United Kingdom by ship or aircraft, and the special powers exercisable in the case of those who arrive as, or with a view to becoming, members of the crews of ships and aircraft; and

(*c*) the exercise by immigration officers of their powers in relation to entry into the United Kingdom, and the removal from the United Kingdom of persons refused leave to enter or entering or remaining unlawfully; and

(*d*) the detention of persons pending examination or pending removal from the United Kingdom;

and for other purposes supplementary to the foregoing provisions of this Act.

(3) The Secretary of State may by regulations made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, make provision as to the effect of a condition under this Act requiring a person to register with the police; and the regulations may include provision—

(*a*) as to the officers of police by whom registers are to be maintained, and as to the form and content of the registers;

(*b*) as to the place and manner in which anyone is to register and as to the documents and information to be furnished by him, whether on registration or on any change of circumstances;

(*c*) as to the issue of certificates of registration and as to the payment of fees for certificates of registration;

and the regulations may require anyone who is for the time being subject to such a condition to produce a certificate of registration to such persons and in such circumstances as may be prescribed by the regulations.

(4) The Secretary of State may by order made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as

appears to him to be expedient in connection with this Act for records to be made and kept of persons staying at hotels and other premises where lodging or sleeping accommodation is provided, and for persons (whether patrial or not) who stay at any such premises to supply the necessary information.

Procedure for, and further provisions as to, deportation.

5.—(1) Where a person is under section 3(5) or (6) above liable to deportation, then subject to the following provisions of this Act the Secretary of State may make a deportation order against him, that is to say an order requiring him to leave and prohibiting him from entering the United Kingdom; and a deportation order against a person shall invalidate any leave to enter or remain in the United Kingdom given him before the order is made or while it is in force.

(2) A deportation order against a person may at any time be revoked by a further order of the Secretary of State, and shall cease to have effect if he becomes patrial.

(3) A deportation order shall not be made against a person as belonging to the family of another person if more than eight weeks have elapsed since the other person left the United Kingdom after the making of the deportation order against him; and a deportation order made against a person on that ground shall cease to have effect if he ceases to belong to the family of the other person, or if the deportation order made against the other person ceases to have effect.

(4) For purposes of deportation the following shall be those who are regarded as belonging to another person's family—

(*a*) where that other person is a man, his wife and his or her children under the age of eighteen; and

(*b*) where that other person is a woman, her children under the age of eighteen;

and for purposes of this subsection an adopted child, whether legally adopted or not, may be treated as the child of the adopter and, if legally adopted, shall be regarded as the child only of the adopter; an illegitimate child (subject to the foregoing rule as to adoptions) shall be regarded as the child of the mother; and "wife" includes each of two or more wives.

(5) The provisions of Schedule 3 to this Act shall have effect with respect to the removal from the United Kingdom of persons against whom deportation orders are in force and with respect to the detention or control of persons in connection with deportation.

(6) Where a person is liable to deportation under section 3(5)(*c*) or (6) above but, without a deportation order being made against him, leaves the United Kingdom to live permanently abroad, the Secretary of State may make payments of such amounts as he may determine to meet that person's expenses in so leaving the United Kingdom, including travelling expenses for members of his family or household.

Recommendations by court for deportation.

6.—(1) Where under section 3(6) above a person convicted of an offence is liable to deportation on the recommendation of a court, he may be recommended for deportation by any court having power to sentence him for the offence unless the court commits him to be sentenced or further dealt with for that offence by another court:

Provided that in Scotland the power to recommend a person for deportation shall be exercisable only by the sheriff or the High Court of Justiciary, and shall not be exercisable by the latter on an appeal unless the appeal is against a conviction on indictment or against a sentence upon such a conviction.

(2) A court shall not recommend a person for deportation unless he has been given not less than seven days notice in writing stating that a person is not liable to deportation if he is patrial, describing the persons who are patrial and stating (so far as material) the effect of section 3(8) above and section 7 below; but the powers of adjournment conferred by section 14(3) of the Magistrates' Courts Act 1952, section 26 of the Criminal Justice (Scotland) Act 1949 or any corresponding enactment for the time being in force in Northern Ireland shall include power to adjourn, after convicting an offender, for the purpose of enabling a notice to be given to him under this subsection or, if a notice was so given to him less than seven days previously, for the purpose of enabling the necessary seven days to elapse.

1952 c. 55.
1949 c. 94.

(3) For purposes of section 3(6) above—

(*a*) a person shall be deemed to have attained the age of seventeen at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court making or considering a recommendation for deportation; and

(*b*) the question whether an offence is one for which a person is punishable with imprisonment shall be determined without regard to any enactment restricting the imprisonment of young offenders or [[1]first offenders] [[1]persons who have not previously been sentenced to imprisonment];

and for purposes of deportation a person who on being charged with an offence is found to have committed it shall, notwithstanding any enactment to the contrary and notwithstanding that the court does not proceed to conviction, be regarded as a person convicted of the offence, and references to conviction shall be construed accordingly.

(4) Notwithstanding any rule of practice restricting the matters which ought to be taken into account in dealing with an offender who is sentenced to imprisonment, a recommendation for deportation

[1]Words "persons" to "imprisonment" substituted for words "first offenders" (E.W.) by Criminal Justice Act 1972 (c. 71), Sch. 5

may be made in respect of an offender who is sentenced to imprisonment for life.

(5) Where a court recommends or purports to recommend a person for deportation, the validity of the recommendation shall not be called in question except on an appeal against the recommendation or against the conviction on which it is made; but—

(*a*) except in Scotland, the recommendation shall be treated as a sentence for the purpose of any enactment providing an appeal against sentence; and

(*b*) in Scotland, a person recommended for deportation may, without prejudice to any other form of appeal under any rule of law, appeal against the recommendation in the same manner as against a conviction.

(6) A deportation order shall not be made on the recommendation of a court so long as an appeal or further appeal is pending against the recommendation or against the conviction on which it was made; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal or, in Scotland, until the expiration of twenty-eight days from the date of the recommendation.

(7) For the purpose of giving effect to any of the provisions of this section in its application to Scotland, the High Court of Justiciary shall have power to make rules by act of adjournal.

Exemption from deportation for certain existing residents.

7.—(1) Notwithstanding anything in section 3(5) or (6) above but subject to the provisions of this section, a Commonwealth citizen or citizen of the Republic of Ireland who was such a citizen at the coming into force of this Act and was then ordinarily resident in the United Kingdom—

(*a*) shall not be liable to deportation under section 3(5)(*b*) if at the time of the Secretary of State's decision he had at all times since the coming into force of this Act been ordinarily resident in the United Kingdom and Islands; and

(*b*) shall not be liable to deportation under section 3(5)(*a*), (*b*) or (*c*) if at the time of the Secretary of State's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands; and

(*c*) shall not on conviction of an offence be recommended for deportation under section 3(6) if at the time of the conviction he had for the last five years been ordinarily resident in the United Kingdom and Islands.

(2) A person who has at any time become ordinarily resident in the United Kingdom or in any of the Islands shall not be treated for the

purposes of this section as having ceased to be so by reason only of his having remained there in breach of the immigration laws.

(3) The "last five years" before the material time under subsection (1)(*b*) or (*c*) above is to be taken as a period amounting in total to five years exclusive of any time during which the person claiming exemption under this section was undergoing imprisonment or detention by virtue of a sentence passed for an offence on a conviction in the United Kingdom and Islands, and the period for which he was imprisoned or detained by virtue of the sentence amounted to six months or more.

(4) For purposes of subsection (3) above—

(*a*) "sentence" includes any order made on conviction of an offence; and

(*b*) two or more sentences for consecutive (or partly consecutive) terms shall be treated as a single sentence; and

(*c*) a person shall be deemed to be detained by virtue of a sentence—

(i) at any time when he is liable to imprisonment or detention by virtue of the sentence, but is unlawfully at large; and

(ii) (unless the sentence is passed after the material time) during any period of custody by which under any relevant enactment the term to be served under the sentence is reduced.

1967 c. 80.
1962 c. 15.

In paragraph (*c*)(ii) above "relevant enactment" means section 67 of the Criminal Justice Act 1967 (or, before that section operated, section 17(2) of the Criminal Justice Administration Act 1962) and any similar enactment which is for the time being or has (before or after the passing of this Act) been in force in any part of the United Kingdom and Islands.

(5) Nothing in this section shall be taken to exclude the operation of section 3(8) above in relation to an exemption under this section.

Exceptions for seamen, aircrews and other special cases.

8.—(1) Where a person arrives at a place in the United Kingdom as a member of the crew of a ship or aircraft under an engagement requiring him to leave on that ship as a member of the crew, or to leave within seven days on that or another aircraft as a member of its crew, then unless either—

(*a*) there is in force a deportation order made against him; or

(*b*) he has at any time been refused leave to enter the United Kingdom and has not since then been given leave to enter or remain in the United Kingdom; or

(*c*) an immigration officer requires him to submit to examination in accordance with Schedule 2 to this Act;

he may without leave enter the United Kingdom at that place and remain until the departure of the ship or aircraft on which he is required by his engagement to leave.

(2) The Secretary of State may by order exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of this Act relating to those who are not patrial.

An order under this subsection, if made with respect to a class of persons, shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The provisions of this Act relating to those who are not patrial shall not apply to any person so long as he is a member of a mission (within the meaning of the Diplomatic Privileges Act 1964), a person who is a member of the family and forms part of the household of such a member, or a person otherwise entitled to the like immunity from jurisdiction as is conferred by that Act on a diplomatic agent. 1964 c. 81.

(4) The provisions of this Act relating to those who are not patrial, other than the provisions relating to deportation, shall also not apply to any person so long as either—

(*a*) he is subject, as a member of the home forces, to service law; or

(*b*) being a member of a Commonwealth force or of a force raised under the law of any associated state, colony, protectorate or protected state, is undergoing or about to undergo training in the United Kingdom with any body, contingent or detachment of the home forces; or

(*c*) he is serving or posted for service in the United Kingdom as a member of a visiting force or of any force raised as aforesaid or as a member of an international headquarters or defence organisation designated for the time being by an Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964. 1964 c. 5.

(5) Where a person having a limited leave to enter or remain in the United Kingdom becomes entitled to an exemption under this section, that leave shall continue to apply after he ceases to be entitled to the exemption, unless it has by then expired; and a person is not to be regarded for purposes of this Act as having been settled in the United Kingdom and Islands at any time when he was entitled to an exemption under subsection (3) or (4)(*b*) or (*c*) above or, unless the order otherwise provides, under subsection (2) or to any corresponding exemption under the former immigration laws or under the immigration laws of any of the Islands.

(6) In this section "the home forces" means any of Her Majesty's forces other than a Commonwealth force or a force raised under the

law of any associated state, colony, protectorate or protected state; "Commonwealth force" means a force of any country to which provisions of the Visiting Forces Act 1952 apply without an Order in Council under section 1 of the Act; and "visiting force" means a body, contingent or detachment of the forces of a country to which any of those provisions apply, being a body, contingent or detachment for the time being present in the United Kingdom on the invitation of Her Majesty's Government in the United Kingdom.

1952 c. 67.

Further provisions as to common travel area.

9.—(1) Subject to subsection (5) below, the provisions of Schedule 4 to this Act shall have effect for the purpose of taking account in the United Kingdom of the operation in any of the Islands of the immigration laws there.

(2) Persons who lawfully enter the United Kingdom on a local journey from a place in the common travel area after having either—

(*a*) entered any of the Islands or the Republic of Ireland on coming from a place outside the common travel area; or

(*b*) left the United Kingdom while having a limited leave to enter or remain which has since expired;

if they are not patrial (and are not to be regarded under Schedule 4 to this Act as having leave to enter the United Kingdom), shall be subject in the United Kingdom to such restrictions on the period for which they may remain, and such conditions restricting their employment or occupation or requiring them to register with the police or both, as may be imposed by an order of the Secretary of State and may be applicable to them.

(3) Any provision of this Act applying to a limited leave or to conditions attached to a limited leave shall, unless otherwise provided, have effect in relation to a person subject to any restriction or condition by virtue of an order under subsection (2) above as if the provisions of the order applicable to him were terms on which he had been given leave under this Act to enter the United Kingdom.

(4) Section 1(3) above shall not be taken to affect the operation of a deportation order; and, subject to Schedule 4 to this Act, a person who is not patrial may not by virtue of section 1(3) enter the United Kingdom without leave on a local journey from a place in the common travel area if either—

(*a*) he is on arrival in the United Kingdom given written notice by an immigration officer stating that, the Secretary of State having issued directions for him not to be given entry to the United Kingdom on the ground that his exclusion is conducive to the public good as being in the interests of national security, he is accordingly refused leave to enter the United Kingdom; or

(*b*) he has at any time been refused leave to enter the United Kingdom and has not since then been given leave to enter or remain in the United Kingdom.

(5) If it appears to the Secretary of State necessary so to do by reason of differences between the immigration laws of the United Kingdom and any of the Islands, he may by order exclude that island from section 1(3) above for such purposes as may be specified in the order, and references in this Act to the Islands other than any reference in section 2 shall apply to an island so excluded so far only as may be provided by order of the Secretary of State.

(6) The Secretary of State shall also have power by order to exclude the Republic of Ireland from section 1(3) for such purposes as may be specified in the order.

(7) An order of the Secretary of State under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Entry otherwise than by sea or air.

10.—(1) Her Majesty may by Order in Council direct that any of the provisions of this Act shall have effect in relation to persons entering or seeking to enter the United Kingdom on arrival otherwise than by ship or aircraft as they have effect in the case of a person arriving by ship or aircraft; and any such Order may make such adaptations or modifications of those provisions, and such provisions supplementary thereto, as appear to Her Majesty to be necessary or expedient for the purposes of the Order.

(2) The provision made by an Order in Council under this section may include provision for excluding the Republic of Ireland from section 1(3) of this Act either generally or for any specified purposes.

(3) No recommendation shall be made to Her Majesty to make an Order in Council under this section unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

Construction of references to entry, and other phrases relating to travel.

11.—(1) A person arriving in the United Kingdom by ship or aircraft shall for purposes of this Act be deemed not to enter the United Kingdom unless and until he disembarks, and on disembarkation at a port shall further be deemed not to enter the United Kingdom so long as he remains in such area (if any) at the port as may be approved for this purpose by an immigration officer; and a person who has not otherwise entered the United Kingdom shall be deemed not to do so as long as he is detained, or temporarily admitted or released while liable to detention, under the powers conferred by Schedule 2 to this Act.

(2) In this Act "disembark" means disembark from a ship or aircraft, and "embark" means embark in a ship or aircraft; and, except in subsection (1) above,—

(*a*) references to disembarking in the United Kingdom do not apply to disembarking after a local journey from a place in the United Kingdom or elsewhere in the common travel area; and

(*b*) references to embarking in the United Kingdom do not apply to embarking for a local journey to a place in the United Kingdom or elsewhere in the common travel area.

(3) Except in so far as the context otherwise requires, references in this Act to arriving in the United Kingdom by ship shall extend to arrival by any floating structure, and "disembark" shall be construed accordingly; but the provisions of this Act specially relating to members of the crew of a ship shall not by virtue of this provision apply in relation to any floating structure not being a ship.

(4) For purposes of this Act "common travel area" has the meaning given by section 1(3), and a journey is, in relation to the common travel area, a local journey if but only if it begins and ends in the common travel area and is not made by a ship or aircraft which—

(*a*) in the case of a journey to a place in the United Kingdom, began its voyage from, or has during its voyage called at, a place not in the common travel area; or

(*b*) in the case of a journey from a place in the United Kingdom, is due to end its voyage in, or call in the course of its voyage at, a place not in the common travel area.

(5) A person who enters the United Kingdom lawfully by virtue of section 8(1) above, and seeks to remain beyond the time limited by section 8(1), shall be treated for purposes of this Act as seeking to enter the United Kingdom.

PART II

APPEALS

The appellate authorities

Immigration Appeal Tribunal and adjudicators. 1969 c. 21.

12. The Immigration Appeal Tribunal and adjudicators provided for by the Immigration Appeals Act 1969 shall continue for purposes of this Act, and—

(*a*) members of the Tribunal shall continue to be appointed by the Lord Chancellor and adjudicators by the Secretary of State; and

(*b*) the provisions of Schedule 1 to that Act shall continue to apply, as set out in Schedule 5 to this Act with the required adaptation of references to that Act, but with the

substitution also of references to the Minister for the Civil Service for references to the Treasury.

Appeals to adjudicator or Tribunal in first instance

Appeals against exclusion from United Kingdom.

13.—(1) Subject to the provisions of this Part of this Act, a person who is refused leave to enter the United Kingdom under this Act may appeal to an adjudicator against the decision that he requires leave or against the refusal.

(2) Subject to the provisions of this Part of this Act, a person who, on an application duly made, is refused a certificate of patriality or an entry clearance may appeal to an adjudicator against the refusal.

(3) A person not holding a certificate of patriality shall not be entitled to appeal on the ground that he is patrial by virtue of section 2(1)(*c*) or (*d*) or section 2(2) above against a decision that he requires leave to enter the United Kingdom unless in the case of a woman who is a citizen of the United Kingdom and Colonies the ground of appeal is that she is patrial by virtue of section 2(2) apart from any reference therein to section 2(1)(*c*) or (*d*); and a person shall not be entitled to appeal against a refusal of leave to enter so long as he is in the United Kingdom, unless he was refused leave at a port of entry and at a time when he held a current entry clearance or was a person named in a current work permit.

(4) An appeal against a refusal of leave to enter shall be dismissed by the adjudicator if he is satisfied that the appellant was at the time of the refusal an illegal entrant, and an appeal against a refusal of an entry clearance shall be dismissed by the adjudicator if he is satisfied that a deportation order was at the time of the refusal in force in respect of the appellant.

(5) A person shall not be entitled to appeal against a refusal of leave to enter, or against a refusal of an entry clearance, if the Secretary of State certifies that directions have been given by the Secretary of State (and not by a person acting under his authority) for the appellant not to be given entry to the United Kingdom on the ground that his exclusion is conducive to the public good, or if the leave to enter or entry clearance was refused in obedience to any such directions.

Appeals against conditions.

14.—(1) Subject to the provisions of this Part of this Act, a person who has a limited leave under this Act to enter or remain in the United Kingdom may appeal to an adjudicator against any variation of the leave (whether as regards duration or conditions), or against any refusal to vary it; and a variation shall not take effect so long as an appeal is pending under this subsection against the variation, nor shall an appellant be required to leave the United Kingdom by reason of the expiration of his leave so long as his appeal is pending under this subsection against a refusal to enlarge or remove the limit on the duration of the leave.

(2) Subject to the provisions of this Part of this Act, a person who, on ceasing to be entitled to an exemption under any provision of section 8 above other than section 8(1), or on ceasing while in the United Kingdom to be patrial, is given a limited leave to remain may appeal to an adjudicator against any provision limiting the duration of the leave or attaching a condition to it; and so long as an appeal is pending under this subsection against any provision, effect shall not be given to that provision.

(3) A person shall not be entitled to appeal under subsection (1) above against any variation of his leave which reduces its duration, or against any refusal to enlarge or remove the limit on its duration, if the Secretary of State certifies that the appellant's departure from the United Kingdom would be conducive to the public good, as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature, or the decision questioned by the appeal was taken on that ground by the Secretary of State (and not by a person acting under his authority).

(4) A person shall not be entitled to appeal under subsection (1) above against any variation made by statutory instrument, or against any refusal of the Secretary of State to make a statutory instrument.

Appeals in respect of deportation orders.

15.—(1) Subject to the provisions of this Part of this Act, a person may appeal to an adjudicator against—

(*a*) a decision of the Secretary of State to make a deportation order against him by virtue of section 3(5) above; or

(*b*) a refusal by the Secretary of State to revoke a deportation order made against him.

(2) A deportation order shall not be made against a person by virtue of section 3(5) above so long as an appeal may be brought against the decision to make it nor, if such an appeal is duly brought, so long as the appeal is pending; but, in calculating the period of eight weeks limited by section 5(3) above for making a deportation order against a person as belonging to the family of another person, there shall be disregarded any period during which there is pending an appeal against the decision to make it.

(3) A person shall not be entitled to appeal against a decision to make a deportation order against him if the ground of the decision was that his deportation is conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature.

(4) A person shall not be entitled to appeal under this section against a refusal to revoke a deportation order, if the Secretary of State certifies that the appellant's exclusion from the United Kingdom is conducive to the public good or if revocation was

refused on that ground by the Secretary of State (and not by a person acting under his authority).

(5) A person shall not be entitled to appeal under this section against a refusal to revoke a deportation order so long as he is in the United Kingdom, whether because he has not complied with the requirement to leave or because he has contravened the prohibition on entering.

(6) On an appeal against a decision to make a deportation order against a person as belonging to the family of another person, or an appeal against a refusal to revoke a deportation order so made, the appellant shall not be allowed, for the purpose of showing that he does not or did not belong to another person's family, to dispute any statement made with a view to obtaining leave for the appellant to enter or remain in the United Kingdom (including any statement made to obtain an entry clearance) unless the appellant shows that the statement was not so made by him or by any person acting with his authority and that, when he took the benefit of the leave, he did not know any such statement had been made to obtain it or, if he did know, was under the age of eighteen.

(7) An appeal under this section shall be to the Appeal Tribunal in the first instance, instead of to an adjudicator, if—

(*a*) it is an appeal against a decision to make a deportation order and the ground of the decision was that the deportation of the appellant is conducive to the public good; or

(*b*) it is an appeal against a decision to make a deportation order against a person as belonging to the family of another person, or an appeal against a refusal to revoke a deportation order so made; or

(*c*) there is pending a related appeal to which paragraph (*b*) above applies.

(8) Where an appeal to an adjudicator is pending under this section, and before the adjudicator has begun to hear it a related appeal is brought, the appeal to the adjudicator shall be dealt with instead by the Appeal Tribunal and be treated as an appeal duly made to the Tribunal in the first instance.

(9) In relation to an appeal under this section in respect of a deportation order against any person (whether an appeal against a decision to make or against a refusal to revoke the order), any other appeal under this section is a "related appeal" if it is an appeal in respect of a deportation order against another person as belonging to the family of the first-mentioned person.

Appeals against validity of directions for removal.

16.—(1) Subject to the provisions of this Part of this Act, where directions are given under this Act for a person's removal from the United Kingdom either—

(*a*) on the ground that he is an illegal entrant or on the ground specifically that he has entered the United Kingdom in breach of a deportation order; or

(*b*) under the special powers conferred by Schedule 2 to this Act in relation to members of the crew of a ship or aircraft or persons coming to the United Kingdom to join a ship or aircraft as a member of the crew;

then he may appeal to an adjudicator against those directions on the ground that in the facts of his case there was in law no power to give them on the ground on which they were given.

(2) A person shall not be entitled to appeal under this section so long as he is in the United Kingdom, unless he is appealing against directions given by virtue of a deportation order (whether on the ground specifically that he has returned in breach of that order or on the ground that he is an illegal entrant) and is appealing on the ground that he is not the person named in that order.

(3) Where a person appeals under this section against directions given by virtue of a deportation order, he shall not be allowed to dispute the original validity of that order.

(4) An appeal under this section against directions given as mentioned in subsection (1)(*b*) shall be dismissed by the adjudicator, notwithstanding that the ground of appeal may be made out, if he is satisfied that there was power to give the like directions on the ground that the appellant was an illegal entrant.

Appeals against removal on objection to destination.

17.—(1) Subject to the provisions of this Part of this Act, where directions are given under this Act for a person's removal from the United Kingdom either—

(*a*) on his being refused leave to enter; or

(*b*) on a deportation order being made against him; or

(*c*) on his having entered the United Kingdom in breach of a deportation order;

he may appeal to an adjudicator against the directions on the ground that he ought to be removed (if at all) to a different country or territory specified by him.

(2) Where a person appeals under section 13(1) above on being refused leave to enter the United Kingdom, and either—

(*a*) before he does so, directions have been given for his removal from the United Kingdom to any country or territory; or

(*b*) before or after he does so, the Secretary of State or an immigration officer serves on him notice that any directions which may be given for his removal by virtue of the refusal will be for his removal to a country or territory or one of several countries or territories specified in the notice;

then he may on that appeal object to the country or territory to which he would be removed in pursuance of the directions, or to that specified in the notice (or to one or more of those specified), and claim that he ought to be removed (if at all) to a different country or territory specified by him.

(3) Where a person appeals under section 15 above against a decision to make a deportation order against him, and before or after he does so the Secretary of State serves on him notice that any directions which may be given for his removal by virtue of the deportation order will be for his removal to a country or territory or one of several countries or territories specified in the notice, then he may on that appeal object to the country or territory specified in the notice (or to one or more of those specified), and claim that he ought to be removed (if at all) to a different country or territory specified by him.

(4) Where by virtue of subsection (2) or (3) above a person is able to object to a country or territory on an appeal under section 13(1) or 15, and either he does not object to it on that appeal or his objection to it on that appeal is not sustained, then he shall not be entitled to appeal under this section against any directions subsequently given by virtue of the refusal or order in question, if their effect will be his removal to that country or territory.

(5) A person shall not be entitled to appeal under this section against any directions given on his being refused leave to enter the United Kingdom, unless either he is also appealing under section 13(1) against the decision that he requires leave to enter or he was refused leave at a port of entry and at a time when he held a current entry clearance or was a person named in a current work permit.

Notice of matters in respect of which there are rights of appeal.

18.—(1) The Secretary of State may by regulations provide—

(*a*) for written notice to be given to a person of any such decision or action taken in respect of him as is appealable under this Part of this Act (whether or not he is in the facts of his case entitled to appeal) or would be so appealable but for the ground on which it is taken;

(*b*) for any such notice to include a statement of the reasons for the decision or action and, where the action is the giving of directions for the removal of any person from the United Kingdom, of the country or territory to which he is to be removed;

(*c*) for any such notice to be accompanied by a statement containing particulars of the rights of appeal available under this Part of this Act and of the procedure by which those rights may be exercised;

(*d*) for the form of any such notice or statement and the way in which a notice is to be or may be given.

(2) For the purpose of any proceedings under this Part of this Act a statement included in a notice in pursuance of regulations under this section shall be conclusive of the person by whom and of the ground on which any decision or action was taken.

(3) The power to make regulations under this section shall be exercisable by statutory instrument, and any statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Determination of appeals by adjudicators.

19.—(1) Subject to sections 13(4) and 16(4) above, and to any restriction on the grounds of appeal, an adjudicator on an appeal to him under this Part of this Act—

(*a*) shall allow the appeal if he considers—

(i) that the decision or action against which the appeal is brought was not in accordance with the law or with any immigration rules applicable to the case; or

(ii) where the decision or action involved the exercise of a discretion by the Secretary of State or an officer, that the discretion should have been exercised differently; and

(*b*) in any other case, shall dismiss the appeal.

(2) For the purposes of subsection (1)(*a*) above the adjudicator may review any determination of a question of fact on which the decision or action was based; and for the purposes of subsection (1)(*a*)(ii) no decision or action which is in accordance with the immigration rules shall be treated as having involved the exercise of a discretion by the Secretary of State by reason only of the fact that he has been requested by or on behalf of the appellant to depart, or to authorise an officer to depart, from the rules and has refused to do so.

(3) Where an appeal is allowed, the adjudicator shall give such directions for giving effect to the determination as the adjudicator thinks requisite, and may also make recommendations with respect to any other action which the adjudicator considers should be taken in the case under this Act; and, subject to section 20(2) below, it shall be the duty of the Secretary of State and of any officer to whom directions are given under this subsection to comply with them.

(4) Where in accordance with section 15 above a person appeals to the Appeal Tribunal in the first instance, this section shall apply with the substitution of references to the Tribunal for references to an adjudicator.

Appeals from adjudicator to Tribunal, and review of decisions

Appeal to Tribunal from determination of adjudicator.

20.—(1) Subject to any requirement of rules of procedure as to leave to appeal, any party to an appeal to an adjudicator may, if dissatisfied with his determination thereon, appeal to the Appeal Tribunal, and the Tribunal may affirm the determination or make

any other determination which could have been made by the adjudicator.

(2) Directions given by an adjudicator under section 19(3) above need not be complied with so long as an appeal can be brought against his determination and, if such an appeal is duly brought, so long as the appeal is pending; and if the Tribunal affirm his determination allowing the appeal, they may alter or add to his directions and recommendations under section 19(3) or replace them with their own directions and recommendations, and the provisions of that subsection shall apply to directions given by them accordingly.

(3) Where an appeal is dismissed by an adjudicator but allowed by the Tribunal, section 19(3) above shall apply with the substitution of references to the Tribunal for references to the adjudicator.

Reference of cases for further consideration.

21.—(1) Where in any case—

(*a*) an adjudicator has dismissed an appeal, and there has been no further appeal to the Appeal Tribunal, or the Tribunal has dismissed an appeal made to them in the first instance by virtue of section 15 above; or

(*b*) the Appeal Tribunal has affirmed the determination of an adjudicator dismissing an appeal, or reversed the determination of an adjudicator allowing an appeal;

the Secretary of State may at any time refer for consideration under this section any matter relating to the case which was not before the adjudicator or Tribunal.

(2) Any reference under this section shall be to an adjudicator or to the Appeal Tribunal, and the adjudicator or Tribunal shall consider the matter which is the subject of the reference and report to the Secretary of State the opinion of the adjudicator or Tribunal thereon.

Supplementary

Procedure.

22.—(1) The Secretary of State may make rules (in this Act referred to as "rules of procedure")—

(*a*) for regulating the exercise of the rights of appeal conferred by this Part of this Act;

(*b*) for prescribing the practice and procedure to be followed on or in connection with appeals thereunder, including the mode and burden of proof and admissibility of evidence on such an appeal; and

(*c*) for other matters preliminary or incidental to or arising out of such appeals, including proof of the decisions of adjudicators or the Appeal Tribunal.

(2) Rules of procedure may include provision—

(*a*) enabling the Tribunal, on an appeal from an adjudicator, to remit the appeal to an adjudicator for determination by him in accordance with any directions of the Tribunal, or for further evidence to be obtained with a view to determination by the Tribunal; or

(*b*) enabling any functions of the Tribunal which relate to matters preliminary or incidental to an appeal, or which are conferred by Part II of Schedule 2 to this Act, to be performed by a single member of the Tribunal; or

(*c*) conferring on adjudicators or the Tribunal such ancillary powers as the Secretary of State thinks necessary for the purposes of the exercise of their functions.

(3) The rules of procedure shall provide that any appellant shall have the right to be legally represented.

(4) Where on an appeal under this Part of this Act it is alleged—

(*a*) that a passport or other travel document, certificate of patriality, entry clearance or work permit (or any part thereof or entry therein) on which a party relies is a forgery; and

(*b*) that the disclosure to that party of any matters relating to the method of detection would be contrary to the public interest;

then (without prejudice to the generality of the power to make rules of procedure) the adjudicator or Tribunal shall arrange for the proceedings to take place in the absence of that party and his representatives while the allegation at (*b*) above is inquired into by the adjudicator or Tribunal and, if it appears to the adjudicator or Tribunal that the allegation is made out, for such further period as appears necessary in order to ensure that those matters can be presented to the adjudicator or Tribunal without any disclosure being directly or indirectly made contrary to the public interest.

(5) If under the rules of procedure leave to appeal to the Tribunal is required in cases where an adjudicator dismisses an appeal under section 13 above, then the authority having power to grant leave to appeal shall grant it—

(*a*) in any case where the appeal was against a decision that the appellant required leave to enter the United Kingdom, and the authority is satisfied that at the time of the decision he held a certificate of patriality; and

(*b*) in any case where the appeal was against a refusal of leave to enter, and the authority is satisfied that at the time of the refusal the appellant held an entry clearance and that the dismissal of the appeal was not required by section 13(4).

(6) A person who is required under or in accordance with rules of procedure to attend and give evidence or produce documents before

an adjudicator or the Tribunal, and fails without reasonable excuse to comply with the requirement, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.

(7) The power to make rules of procedure shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Financial support for organisations helping persons with rights of appeal.

23. The Secretary of State may with the consent of the Treasury make grants to any voluntary organisation which provides advice or assistance for, or other services for the welfare of, persons who have rights of appeal under this Part of this Act.

PART III

CRIMINAL PROCEEDINGS

Illegal entry and similar offences.

24.—(1) A person who is not patrial shall be guilty of an offence punishable on summary conviction with a fine of not more than £200 or with imprisonment for not more than six months, or with both, in any of the following cases:—

(*a*) if contrary to this Act he knowingly enters the United Kingdom in breach of a deportation order or without leave;

(*b*) if, having only a limited leave to enter or remain in the United Kingdom, he knowingly either—

(i) remains beyond the time limited by the leave; or

(ii) fails to observe a condition of the leave;

(*c*) if, having lawfully entered the United Kingdom without leave by virtue of section 8(1) above, he remains without leave beyond the time allowed by section 8(1);

(*d*) if, without reasonable excuse, he fails to comply with any requirement imposed on him under Schedule 2 to this Act to report to [1a medical officer of health] [1the chief administrative medical officer of a Health Board], or to attend, or submit to a test or examination, as required by such an officer;

(*e*) if, without reasonable excuse, he fails to observe any restriction imposed on him under Schedule 2 or 3 to this Act as to residence or as to reporting to the police or to an immigration officer;

(*f*) if he disembarks in the United Kingdom from a ship or aircraft after being placed on board under Schedule 2 or 3

[1]Words "the chief" to "Health Board" substituted for words "a medical officer of health" (S.) by National Health Service (Scotland) Act 1972 (c. 58), Sch. 6 para. 155

to this Act with a view to his removal from the United Kingdom;

(*g*) if he embarks in contravention of a restriction imposed by or under an Order in Council under section 3(7) of this Act.

(2) A constable or immigration officer may arrest without warrant anyone who has, or whom he, with reasonable cause, suspects to have, committed or attempted to commit an offence under this section other than an offence under subsection (1)(*d*) above.

(3) The extended time limit for prosecutions which is provided for by section 28 below shall apply to offences under subsection (1)(*a*), (*b*)(i) and (*c*) above.

(4) In proceedings for an offence against subsection (1)(*a*) above of entering the United Kingdom without leave,—

(*a*) any stamp purporting to have been imprinted on a passport or other travel document by an immigration officer on a particular date for the purpose of giving leave shall be presumed to have been duly so imprinted, unless the contrary is proved;

(*b*) proof that a person had leave to enter the United Kingdom shall lie on the defence if, but only if, he is shown to have entered within six months before the date when the proceedings were commenced.

S. 24(1)(d) amended as to the functions of a medical officer of health (N.I.) by S.R. & O. (N.I.) 1973/256

Assisting illegal entry, and harbouring.

25.—(1) Any person knowingly concerned in making or carrying out arrangements for securing or facilitating the entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an illegal entrant shall be guilty of an offence, punishable on summary conviction with a fine of not more than £400 or with imprisonment for not more than six months, or with both, or on conviction on indictment with a fine or with imprisonment for not more than seven years, or with both.

(2) Without prejudice to subsection (1) above a person knowingly harbouring anyone whom he knows or has reasonable cause for believing to be either an illegal entrant or a person who has committed an offence under section 24(1)(*b*) or (*c*) above, shall be guilty of an offence, punishable on summary conviction with a fine of not more than £400 or with imprisonment for not more than six months, or with both.

(3) A constable or immigration officer may arrest without warrant anyone who has, or whom he, with reasonable cause, suspects to have, committed an offence under subsection (1) above.

(4) The extended time limit for prosecutions which is provided for by section 28 below shall apply to offences under this section.

(5) Subsection (1) above shall apply to things done outside as well as to things done in the United Kingdom where they are done—

(*a*) by a citizen of the United Kingdom and Colonies;

(*b*) by a British subject by virtue of section 2 of the British Nationality Act 1948 (continuance of certain subjects of the Republic of Ireland as British subjects); 1948 c. 56.

(*c*) by a British subject without citizenship by virtue of section 13 or 16 of that Act (which relate respectively to British subjects whose citizenship had not been ascertained at the commencement of that Act and to persons who had ceased to be British on loss of British nationality by a parent);

(*d*) by a British subject by virtue of the British Nationality Act 1965; or 1965 c. 34.

(*e*) by a British protected person (within the meaning of the British Nationality Act 1948).

(6) Where a person convicted on indictment of an offence under subsection (1) above is at the time of the offence—

(*a*) the owner or one of the owners of a ship, aircraft or vehicle used or intended to be used in carrying out the arrangements in respect of which the offence is committed; or

(*b*) a director or manager of a company which is the owner or one of the owners of any such ship, aircraft or vehicle; or

(*c*) captain of any such ship or aircraft;

then subject to subsections (7) and (8) below the court before which he is convicted may order the forfeiture of the ship, aircraft or vehicle.

In this subsection (but not in subsection (7) below) "owner" in relation to a ship, aircraft or vehicle which is the subject of a hire-purchase agreement, includes the person in possession of it under that agreement and, in relation to a ship or aircraft, includes a charterer.

(7) A court shall not order a ship or aircraft to be forfeited under subsection (6) above on a person's conviction, unless—

(*a*) in the case of a ship, it is of less than 500 tons gross tonnage or, in the case of an aircraft (not being a hovercraft), it is of less than 5,700 kilogrammes operating weight; or

(*b*) the person convicted is at the time of the offence the owner or one of the owners, or a director or manager of a company which is the owner or one of the owners, of the ship or aircraft; or

(*c*) the ship or aircraft, under the arrangements in respect of which the offence is committed, has been used for bringing more than 20 persons at one time to the United Kingdom as illegal entrants, and the intention to use the ship or aircraft in bringing persons to the United Kingdom as illegal

entrants was known to, or could by the exercise of reasonable diligence, have been discovered by, some person on whose conviction the ship or aircraft would have been liable to forfeiture in accordance with paragraph (*b*) above.

In this subsection "operating weight" means in relation to an aircraft the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft.

(8) A court shall not order a ship, aircraft or vehicle to be forfeited under subsection (6) above, where a person claiming to be the owner of the ship, aircraft or vehicle or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

General offences in connection with administration of Act.

26.—(1) A person shall be guilty of an offence punishable on summary conviction with a fine of not more than £200 or with imprisonment for not more than six months, or with both, in any of the following cases—

(*a*) if, without reasonable excuse, he refuses or fails to submit to examination under Schedule 2 to this Act;

(*b*) if, without reasonable excuse, he refuses or fails to furnish or produce any information in his possession, or any documents in his possession or control, which he is on an examination under that Schedule required to furnish or produce;

(*c*) if on any such examination or otherwise he makes or causes to be made to an immigration officer or other person lawfully acting in the execution of this Act a return, statement or representation which he knows to be false or does not believe to be true;

(*d*) if, without lawful authority, he alters any certificate of patriality, entry clearance, work permit or other document issued or made under or for the purposes of this Act, or uses for the purposes of this Act, or has in his possession for such use, any passport, certificate of patriality, entry clearance, work permit or other document which he knows or has reasonable cause to believe to be false;

(*e*) if, without reasonable excuse, he fails to complete and produce a landing or embarkation card in accordance with any order under Schedule 2 to this Act;

(*f*) if, without reasonable excuse, he fails to comply with any requirement of regulations under section 4(3) or of an order under section 4(4) above;

(*g*) if, without reasonable excuse, he obstructs an immigration officer or other person lawfully acting in the execution of this Act.

(2) The extended time limit for prosecutions which is provided for by section 28 below shall apply to offences under subsection (1)(*c*) and (*d*) above.

Offences by persons connected with ships or aircraft or with ports.

27. A person shall be guilty of an offence punishable on summary conviction with a fine of not more than £200 or with imprisonment for not more than six months, or with both, in any of the following cases—

(*a*) if, being the captain of a ship or aircraft,—

(i) he knowingly permits a person to disembark in the United Kingdom when required under Schedule 2 or 3 to this Act to prevent it, or fails without reasonable excuse to take any steps he is required by or under Schedule 2 to take in connection with the disembarkation or examination of passengers or for furnishing a passenger list or particulars of members of the crew; or

(ii) he fails, without reasonable excuse, to comply with any directions given him under Schedule 2 or 3 with respect to the removal of a person from the United Kingdom;

(*b*) if, as owner or agent of a ship or aircraft,—

(i) he arranges, or is knowingly concerned in any arrangements, for the ship or aircraft to call at a port other than a port of entry contrary to any provision of Schedule 2 to this Act; or

(ii) he fails, without reasonable excuse, to take any steps required by an order under Schedule 2 for the supply to passengers of landing or embarkation cards; or

(iii) he fails, without reasonable excuse, to make arrangements for the removal of a person from the United Kingdom when required to do so by directions given under Schedule 2 or 3 to this Act;

(*c*) if, as owner or agent of a ship or aircraft or as a person concerned in the management of a port, he fails, without reasonable excuse, to take any steps required by Schedule 2 in relation to the embarkation or disembarkation of passengers where a control area is designated.

Proceedings.

28.—(1) Where the offence is one to which, under section 24, 25 or 26 above, an extended time limit for prosecutions is to apply, then—

(*a*) an information relating to the offence may in England and Wales be tried by a magistrates' court if it is laid within six months after the commission of the offence, or if it is laid within three years after the commission of the offence and

not more than two months after the date certified by a chief officer of police to be the date on which evidence sufficient to justify proceedings came to the notice of an officer of his police force; and

(*b*) summary proceedings for the offence may in Scotland be commenced within six months after the commission of the offence, or within three years after the commission of the offence and not more than two months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify proceedings came to his knowledge; and

(*c*) a complaint charging the commission of the offence may in Northern Ireland be heard and determined by a magistrates' court if it is made within six months after the commission of the offence, or if it is made within three years after the commission of the offence and not more than two months after the date certified by an officer of police not below the rank of assistant chief constable to be the date on which evidence sufficient to justify the proceedings came to the notice of the police in Northern Ireland.

(2) For purposes of subsection (1)(*b*) above proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay; and a certificate of the Lord Advocate as to the date on which such evidence as is mentioned in subsection (1)(*b*) came to his knowledge shall be conclusive evidence.

(3) For the purposes of the trial of a person for an offence under this Part of this Act, the offence shall be deemed to have been committed either at the place at which it actually was committed or at any place at which he may be.

(4) Any powers exercisable under this Act in the case of any person may be exercised notwithstanding that proceedings for an offence under this Part of this Act have been taken against him.

PART IV

SUPPLEMENTARY

Contributions for expenses of persons returning abroad.

29.—(1) The Secretary of State may, in such cases as he may with the approval of the Treasury determine, make payments of such amount as may be so determined to meet or provide for expenses of persons who are not patrial in leaving the United Kingdom for a country or territory where they intend to reside permanently, including travelling expenses for members of their families or households.

(2) The Secretary of State shall, so far as practicable, administer this section so as to secure that a person's expenses in leaving the

United Kingdom are not met by or out of a payment made by the Secretary of State unless it is shown that it is in that person's interest to leave the United Kingdom and that he wishes to do so.

Return of mental patients.

30.—(1) In the following enactments (which provide in relation to England, Wales and Northern Ireland and in relation to Scotland, respectively, for aliens receiving treatment for mental illness as in-patients to be removed, where proper arrangements have been made, to a country or territory outside the United Kingdom and Islands), that is to say,—

(*a*) section 90 of the Mental Health Act 1959; and 1959 c. 72.

(*b*) section 82 of the Mental Health (Scotland) Act 1960; 1960 c. 61.

there shall in each case be substituted for the words "any patient being an alien" the words "any patient who is not patrial within the meaning of the Immigration Act 1971 and".

(2) Under section 90 of the Mental Health Act 1959 (as under section 82 of the Mental Health (Scotland) Act 1960) the Secretary of State shall only authorise the removal of a patient if it appears to him to be in the interests of the patient; and accordingly in section 90 after the words "and for his care or treatment there" there shall be inserted the words "and that it is in the interests of the patient to remove him".

Expenses.

31. There shall be defrayed out of moneys provided by Parliament any expenses incurred by a Secretary of State under or by virtue of this Act—

(*a*) by way of administrative expenses (including any additional expenses under the British Nationality Acts 1948 to 1965 which are attributable to Schedule 1 to this Act); or

(*b*) in connection with the removal of any person from the United Kingdom under Schedule 2 or 3 to this Act or the departure with him of his dependants, or his or their maintenance pending departure; or

(*c*) on account of the remuneration, allowances and other sums payable to or in respect of the adjudicators and members of the Immigration Appeal Tribunal, or of the remuneration of the officers and servants appointed for the adjudicators or Tribunal, or of the expenses of the adjudicators or Tribunal; or

(*d*) on the making of any grants or payments under section 23 or 29 above.

General provisions as to Orders in Council, etc.

32.—(1) Any power conferred by Part I of this Act to make an Order in Council or order (other than a deportation order) or to give any directions includes power to revoke or vary the Order in Council, order or directions.

(2) Any document purporting to be an order, notice or direction made or given by the Secretary of State for the purposes of this Act and to be signed by him or on his behalf, and any document purporting to be a certificate of the Secretary of State so given and to be signed by him, shall be received in evidence, and shall, until the contrary is proved, be deemed to be made or issued by him.

(3) Prima facie evidence of any such order, notice, direction or certificate as aforesaid may, in any legal proceedings or proceedings under Part II of this Act, be given by the production of a document bearing a certificate purporting to be signed by or on behalf of the Secretary of State and stating that the document is a true copy of the order, notice, direction or certificate.

(4) Where an order under section 8(2) above applies to persons specified in a schedule to the order, or any directions of the Secretary of State given for the purposes of this Act apply to persons specified in a schedule to the directions, prima facie evidence of the provisions of the order or directions other than the schedule and of any entry contained in the schedule may, in any legal proceedings or proceedings under Part II of this Act, be given by the production of a document purporting to be signed by or on behalf of the Secretary of State and stating that the document is a true copy of the said provisions and of the relevant entry.

Interpretation.

33.—(1) For purposes of this Act, except in so far as the context otherwise requires—

"aircraft" includes hovercraft, "airport" includes hoverport and "port" includes airport;

"captain" means master (of a ship) or commander (of an aircraft);

"certificate of patriality" means such a certificate as is referred to in section 3(9) above;

"crew", in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain, and "member of the crew" shall be construed accordingly;

"entrant" means a person entering or seeking to enter the United Kingdom, and "illegal entrant" means a person unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, and includes also a person who has so entered;

"entry clearance" means a visa, entry certificate or other document which, in accordance with the immigration rules, is to be taken as evidence of a person's eligibility, though not patrial, for entry into the United Kingdom (but does not include a work permit);

"immigration laws" means this Act and any law for purposes similar to this Act which is for the time being or has (before

or after the passing of this Act) been in force in any part of the United Kingdom and Islands;

"immigration rules" means the rules for the time being laid down as mentioned in section 3(2) above;

"the Islands" means the Channel Islands and the Isle of Man, and "the United Kingdom and Islands" means the United Kingdom and the Islands taken together;

"legally adopted" means adopted in pursuance of an order made by any court in the United Kingdom and Islands or by any adoption specified as an overseas adoption by order of the Secretary of State under section 4 of the Adoption Act 1968; 1968 c. 53.

"limited leave" and "indefinite leave" mean respectively leave under this Act to enter or remain in the United Kingdom which is, and one which is not, limited as to duration;

"settled" shall be construed in accordance with section 2(3)(*d*) above but, where used in relation to the United Kingdom only, as if any reference in section 2(3)(*d*) or in section 8(5) to the Islands were omitted;

"ship" includes every description of vessel used in navigation;

"work permit" means a permit indicating, in accordance with the immigration rules, that a person named in it is eligible, though not patrial, for entry into the United Kingdom for the purpose of taking employment.

(2) It is hereby declared that, except as otherwise provided in this Act, a person is not to be treated for the purposes of any provision of this Act as ordinarily resident in the United Kingdom or in any of the Islands at a time when he is there in breach of the immigration laws.

(3) The ports of entry for purposes of this Act, and the ports of exit for purposes of any Order in Council under section 3(7) above, shall be such ports as may from time to time be designated for the purpose by order of the Secretary of State made by statutory instrument.

(4) For purposes of this Act an appeal under Part II shall, subject to any express provision to the contrary, be treated as pending during the period beginning when notice of appeal is duly given and ending when the appeal is finally determined or withdrawn; and in the case of an appeal to an adjudicator, the appeal shall not be treated as finally determined so long as a further appeal can be brought by virtue of section 20 nor, if such an appeal is duly brought, until it is determined or withdrawn.

(5) This Act shall not be taken to supersede or impair any power exercisable by Her Majesty in relation to aliens by virtue of Her prerogative.

Repeal, transitional and temporary.

34.—(1) Subject to the following provisions of this section, the enactments mentioned in Schedule 6 to this Act are hereby repealed, as from the coming into force of this Act, to the extent mentioned in column 3 of the Schedule; and—

(*a*) this Act, as from its coming into force, shall apply in relation to entrants or others arriving in the United Kingdom at whatever date before or after it comes into force; and

(*b*) after this Act comes into force anything done under or for the purposes of the former immigration laws shall have effect, in so far as any corresponding action could be taken under or for the purposes of this Act, as if done by way of action so taken, and in relation to anything so done this Act shall apply accordingly.

(2) Without prejudice to the generality of subsection (1)(*a*) and (*b*) above, a person refused leave to land by virtue of the Aliens Restriction Act 1914 shall be treated as having been refused leave to enter under this Act, and a person given leave to land by virtue of that Act shall be treated as having been given leave to enter under this Act; and similarly with the Commonwealth Immigrants Acts 1962 and 1968.

1914 c. 12.

1962 c. 21.
1968 c. 9.

(3) A person treated in accordance with subsection (2) above as having leave to enter the United Kingdom—

(*a*) shall be treated as having an indefinite leave, if he is not at the coming into force of this Act subject to a condition limiting his stay in the United Kingdom; and

(*b*) shall be treated, if he is then subject to such a condition, as having a limited leave of such duration, and subject to such conditions (capable of being attached to leave under this Act), as correspond to the conditions to which he is then subject, but not to conditions not capable of being so attached.

This subsection shall have effect in relation to any restriction or requirement imposed by Order in Council under the Aliens Restriction Act 1914 as if it had been imposed by way of a landing condition.

(4) Notwithstanding anything in the foregoing provisions of this Act, the former immigration laws shall continue to apply, and this Act shall not apply,—

(*a*) in relation to the making of deportation orders and matters connected therewith in any case where a decision to make the order has been notified to the person concerned before the coming into force of this Act;

(*b*) in relation to removal from the United Kingdom and matters connected therewith (including detention pending removal or pending the giving of directions for removal) in

any case where a person is to be removed in pursuance of a decision taken before the coming into force of this Act or in pursuance of a deportation order to the making of which paragraph (*a*) above applies;

(*c*) in relation to appeals against any decision taken or other thing done under the former immigration laws, whether taken or done before the coming into force of this Act or by virtue of this subsection.

(5) Subsection (1) above shall not be taken as empowering a court on appeal to recommend for deportation a person whom the court below could not recommend for deportation, or as affecting any right of appeal in respect of a recommendation for deportation made before this Act comes into force, or as enabling a notice given before this Act comes into force and not complying with section 6(2) to take the place of the notice required by section 6(2) to be given before a person is recommended for deportation.

(6) So long as section 2 of the Southern Rhodesia Act 1965 remains in force, this Act shall have effect subject to such provision as may (before or after this Act comes into force) be made by Order in Council under and for the purposes of that section. 1965 c. 76.

Commencement, and interim provisions.

35.—(1) Except as otherwise provided by this Act, Parts I to III of this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument; and references to the coming into force of this Act shall be construed as references to the beginning of the day so appointed.

(2) Section 25 above, except section 25(2), and section 28 in its application to offences under section 25(1) shall come into force at the end of one month beginning with the date this Act is passed.

(3) The provisions of section 28(1) and (2) above shall have effect, as from the passing of this Act, in relation to offences under section 4A (unauthorised landing) of the Commonwealth Immigrants Act 1962 as amended by the Commonwealth Immigrants Act 1968, other than offences committed six months or more before the passing of this Act, as those provisions are expressed to have effect in relation to offences to which the extended time limit for prosecutions is to apply under sections 24, 25 and 26 above; but where proceedings for an offence under section 4A of the Commonwealth Immigrants Act 1962 would have been out of time but for this subsection, section 4A(4) (under which, in certain cases, a person not producing a passport duly stamped by an immigration officer is presumed for purposes of that section to have landed in contravention of it, unless the contrary is proved) shall not apply. 1962 c. 21. 1968 c. 9.

(4) Section 1(2A)(*d*) of the Commonwealth Immigrants Act 1962 (which was inserted by section 1 of the Commonwealth Immigrants Act 1968, and excludes from the control on immigration under those

Acts, among other persons, certain persons registered in the United Kingdom or in an independent country of the Commonwealth as citizens of the United Kingdom and Colonies) shall not apply—

(*a*) to a woman registered after the passing of this Act under or by virtue of section 6(2) (wives) of the British Nationality Act 1948, unless so registered either—

1948 c. 56.

(i) by virtue of her marriage to a citizen of the United Kingdom and Colonies before the passing of this Act; or

(ii) by virtue of her marriage to such a citizen who at the time of her registration or at his death before that time was excluded from the control on immigration under the Commonwealth Immigrants Acts 1962 and 1968 by section 1(2) of the 1962 Act; nor

1962 c. 21.
1968 c. 9.

(*b*) to anyone registered after the passing of this Act under or by virtue of section 7 (children) of the British Nationality Act 1948, unless so registered in the United Kingdom.

(5) So much of section 1 of the Aliens Restriction (Amendment) Act 1919 as limits the duration of that section, and section 5 of the Commonwealth Immigrants Act 1962 in so far as it limits the duration of Part I of that Act, shall cease to have effect on the passing of this Act.

1919 c. 92.

Power to extend to Islands.

36. Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to any of the Islands; and any Order in Council under this subsection may be varied or revoked by a further Order in Council.

Short title and extent.

37.—(1) This Act may be cited as the Immigration Act 1971.

(2) It is hereby declared that this Act extends to Northern Ireland, and (without prejudice to any provision of Schedule 1 to this Act as to the extent of that Schedule) where an enactment repealed by this Act extends outside the United Kingdom, the repeal shall be of like extent.

SCHEDULES

Section 2.

SCHEDULE 1

Registration as Citizen by reason of Residence, Crown Service etc.

1. The law with respect to registration as a citizen of the United Kingdom and Colonies shall be modified as follows:—

(*a*) in the British Nationality Act 1948, immediately before section 6, there shall be inserted as section 5A the provisions set out in

Appendix A to this Schedule, and no person shall be entitled to be registered under or by virtue of section 6(1) of that Act except in the transitional cases allowed for by paragraph 2 below; and

(*b*) in section 8 of the British Nationality Act 1948 (registration outside United Kingdom)— 1948 c. 56.

(i) after the words "foregoing sections" there shall be inserted in subsection (1) the words "or, subject to subsection (1A) of this section, under section 5A" and in subsection (2) the words "or under section 5A of this Act"; and

(ii) there shall be omitted in subsection (1) the words from "and as if" onwards (except for purposes of registration by virtue of paragraph 2 below), and there shall be inserted as subsections (1A) and (1B) the provisions set out in Appendix B to this Schedule; and

(*c*) for section 9 of the British Nationality Act 1948 there shall be substituted the provisions set out in Appendix C to this Schedule (which insert in the section a reference to the new section 5A and add a requirement for the taking in certain cases of an oath of allegiance).

2. Notwithstanding anything in paragraph 1 above or any repeal made by this Act (but subject to paragraph 3 below), a person who would but for this Act have been entitled under or by virtue of section 6(1) of the British Nationality Act 1948 to be registered as a citizen of the United Kingdom and Colonies shall be entitled to be so registered in the United Kingdom if he satisfies the Secretary of State that at the date of his application to be registered he had throughout the last five years or, if it is more than five years, throughout the period since the coming into force of this Act been ordinarily resident in the United Kingdom without being subject, by virtue of any law relating to immigration, to any restriction on the period for which he might remain.

3.—(1) A person in respect of whom a recommendation for deportation is at the date of his application in force shall not be entitled to be registered as a citizen of the United Kingdom and Colonies by virtue of paragraph 2 above.

(2) Where, in accordance with any regulations relating to appeals, a person, when he applies to be so registered by virtue of paragraph 2 above, has been given notice of a decision to make a deportation order in respect of him, he shall not be entitled to be so registered by virtue of that paragraph, unless before the date of his application an appeal by him against that decision has been finally determined in his favour or the Secretary of State has notified him that the order will not be made.

(3) References in this paragraph to recommendations for deportation, deportation orders and other matters shall include any such recommendation, order or matter under the enactments repealed by this Act; and accordingly this paragraph shall apply for purposes of paragraph 2 above in place of the corresponding provision made by section 12(1) of the Commonwealth Immigrants Act 1962 and section 18 of the Immigration Appeals Act 1969. 1962 c. 21. 1969 c. 21.

4.—(1) Paragraph 2 above shall apply in relation to a colony or protectorate with the substitution for references to the United Kingdom and to the Secretary of State of references to that colony or protectorate and to the Governor; and in relation to a colony or protectorate paragraph 3(1) and

(2) shall have effect (with any necessary adaptations) with reference to deportation from the colony or protectorate.

(2) In this paragraph "colony", "protectorate" and "Governor" have the same meanings as they have for purposes of the British Nationality Act 1948, except that "colony" does not include an associated state.

1948 c. 56.

5.—(1) It is hereby declared that this Schedule extends to each of the associated states; and in the application of paragraphs 2 and 3 to an associated state—

(*a*) in paragraph 2 references to the associated state shall be substituted for references to the United Kingdom; and

(*b*) paragraph 3(1) and (2) shall have effect (with any necessary adaptations) with reference to deportation from the associated state.

1967 c. 4.

(2) In paragraph 4 of Schedule 3 to the West Indies Act 1967 (which provides for a person other than the Secretary of State to be given in relation to an associated state certain functions of the Secretary of State, including those under sections of the British Nationality Act 1948 listed in paragraph 4(3)(*a*) there shall be inserted at the beginning of sub-paragraph (3)(*a*) the words "section 5A except as regards registration under section 5A(1) and": and where by virtue of that paragraph the functions of the Secretary of State under section 6(1) of the British Nationality Act 1948 are exercisable by another person the reference in paragraph 2 above to the Secretary of State shall have effect as a reference to that person.

APPENDIX A TO SCHEDULE 1

Provisions to have effect as section 5A of British Nationality Act 1948

5A.—(1) Subject to the provisions of subsections (5) and (6) below, a citizen of any country mentioned in section 1(3) of this Act, being a person of full age and capacity, shall be entitled, on making application therefor to the Secretary of State in the prescribed manner, to be registered as a citizen of the United Kingdom and Colonies if he satisfies the Secretary of State that—

(*a*) he is patrial within the meaning of the Immigration Act 1971 by virtue of section 2(1)(*d*) of that Act or of the reference thereto in section 2(2); and

(*b*) he fulfils the condition in subsection (3) below.

(2) On an application made to the Secretary of State in the prescribed manner, the Secretary of State may cause to be registered as a citizen of the United Kingdom and Colonies any person of full age and capacity who satisfies the Secretary of State that—

(*a*) he is a citizen of a country mentioned in section 1(3) of this Act or of Eire; and

(*b*) he fulfils the condition in subsection (3) below; and

(*c*) he is of good character; and

(*d*) he has sufficient knowledge of the English or Welsh language; and

(*e*) he intends in the event of his being registered to reside in the United Kingdom or a colony or protectorate or to enter into or continue in relevant employment.

(3) The condition that a person is required by subsection (1)(*b*) or (2)(*b*) above to fulfil is that throughout the period of five years ending with the date of his application to be registered, or such shorter period so ending as the Secretary of State may in the special circumstances of any particular case accept, he has been ordinarily resident in the United Kingdom, or engaged in relevant employment, or partly the one and partly the other.

(4) For purposes of this section "relevant employment" means—

(*a*) Crown service under Her Majesty's Government in the United Kingdom; or

(*b*) service under an international organisation of which Her Majesty's Government in the United Kingdom is a member; or

(*c*) service in the employment of a society, company or body of persons established in the United Kingdom;

and in subsection (2)(*e*) includes service in the employment of a society, company or body of persons established either in the United Kingdom or in a colony or protectorate.

(5) A person shall not be registered under this section wholly or partly by reason of service within subsection (4)(*b*) or (*c*) above unless it seems to the Secretary of State fitting that he should be so registered by reason of his close connection with the United Kingdom or, if he is applying for registration under subsection (2), his close connection with the United Kingdom and Colonies.

(6) A person who has renounced citizenship of the United Kingdom and Colonies under this Act shall not be entitled to be registered as a citizen thereof under subsection (1) above, but may be so registered with the approval of the Secretary of State.

(7) Where a person is a British subject without citizenship by virtue of section 13 or 16 of this Act or (being a woman) is a British subject by virtue of section 1 of the British Nationality Act 1965 by virtue of her having satisfied the Secretary of State that she has been married to a man who was, or but for his death would have been, a British subject as aforesaid, this section shall apply to that person as it applies to a citizen of a country mentioned in section 1(3) of this Act. 1965 c. 34.

APPENDIX B TO SCHEDULE 1

Provisions to have effect as section 8(1A) and (1B) of British Nationality Act 1948

1948 c. 56.

(1A) Except in the Channel Islands and the Isle of Man, subsection (1) above shall not apply to the functions of the Secretary of State as regards registration under section 5A(1) of this Act; and in its application to any of those islands that section shall have effect as if a reference to that island were substituted in section 5A(5) for the first reference to the United Kingdom.

(1B) Subject to subsection (1A) above, section 5A of this Act shall in its application to any colony or protectorate, have effect as if for the references in subsection (3) and in subsection (4)(*c*) to the United Kingdom there were substituted references to that colony or protectorate, and as if for the

reference to the English or Welsh language in subsection (2)(*d*) there were substituted a reference to the English language or any other language in current use in that colony or protectorate.

APPENDIX C TO SCHEDULE 1

Appendix C extended by Sri Lanka Republic Act 1972 (c. 55), s. 1(3)

1948 c. 56.

***Provisions to have effect as section 9 of British Nationality Act* 1948**

9.—(1) A person registered under any of the three last foregoing sections or under section 5A of this Act shall, on taking an oath of allegiance in accordance with subsection (2) below if so required by that subsection, be a citizen of the United Kingdom and Colonies by registration as from the date on which he is registered.

(2) A person of full age and capacity shall on registration as mentioned in subsection (1) above, if not already a citizen of a country of which Her Majesty is Queen nor a British subject by virtue of section 1 of the British Nationality Act 1965, take an oath of allegiance in the form specified in the First Schedule to this Act.

1965 c. 34.

Section 4.

SCHEDULE 2

ADMINISTRATIVE PROVISIONS AS TO CONTROL ON ENTRY ETC.

PART I

GENERAL PROVISIONS

Immigration officers and medical inspectors

1.—(1) Immigration officers for the purposes of this Act shall be appointed by the Secretary of State, and he may arrange with the Commissioners of Customs and Excise for the employment of officers of customs and excise as immigration officers under this Act.

(2) Medical inspectors for the purposes of this Act may be appointed by the Secretary of State or, in Northern Ireland, by the Minister of Health and Social Services or other appropriate Minister of the Government of Northern Ireland in pursuance of arrangements made between that Minister and the Secretary of State, and shall be fully qualified medical practitioners.

(3) In the exercise of their functions under this Act immigration officers shall act in accordance with such instructions (not inconsistent with the immigration rules) as may be given them by the Secretary of State, and medical inspectors shall act in accordance with such instructions as may be given them by the Secretary of State or, in Northern Ireland, as may be

given in pursuance of the arrangements mentioned in sub-paragraph (2) above by the Minister making appointments of medical inspectors in Northern Ireland.

(4) An immigration officer or medical inspector may board any ship or aircraft for the purpose of exercising his functions under this Act.

(5) An immigration officer, for the purpose of satisfying himself whether there are persons he may wish to examine under paragraph 2 below, may search any ship or aircraft and anything on board it, or any vehicle taken off a ship or aircraft on which it has been brought to the United Kingdom.

Examination by immigration officers, and medical examination

2.—(1) An immigration officer may examine any persons who have arrived in the United Kingdom by ship or aircraft (including transit passengers, members of the crew and others not seeking to enter the United Kingdom) for the purpose of determining—

(*a*) whether any of them is or is not patrial; and

(*b*) whether, if he is not, he may or may not enter the United Kingdom without leave; and

(*c*) whether, if he may not, he should be given leave and for what period and on what conditions (if any), or should be refused leave.

(2) Any such person, if he is seeking to enter the United Kingdom, may be examined also by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector.

(3) A person, on being examined under this paragraph by an immigration officer or medical inspector, may be required in writing by him to submit to further examination; but a requirement under this sub-paragraph shall not prevent a person who arrives as a transit passenger, or as a member of the crew of a ship or aircraft, or for the purpose of joining a ship or aircraft as a member of the crew, from leaving by his intended ship or aircraft.

3.—(1) An immigration officer may examine any person who is embarking or seeking to embark in the United Kingdom for the purpose of determining whether he is patrial and, if he is not, for the purpose of establishing his identity.

(2) So long as any Order in Council is in force under section 3(7) of this Act, an immigration officer may examine any person who is embarking or seeking to embark in the United Kingdom for the purpose of determining—

(*a*) whether any of the provisions of the Order apply to him; and

(*b*) whether, if so, any power conferred by the Order should be exercised in relation to him and in what way.

Information and documents

4.—(1) It shall be the duty of any person examined under paragraph 2 or 3 above to furnish to the person carrying out the examination all such information in his possession as that person may require for the purpose of his functions under that paragraph.

(2) A person on his examination under paragraph 2 or 3 above by an immigration officer shall, if so required by the immigration officer—

(*a*) produce either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and

(*b*) declare whether or not he is carrying or conveying documents of any relevant description specified by the immigration officer, and produce any documents of that description which he is carrying or conveying.

In paragraph (*b*), "relevant description" means any description appearing to the immigration officer to be relevant for the purposes of the examination.

(3) Where under sub-paragraph (2)(*b*) above a person has been required to declare whether or not he is carrying or conveying documents of any description, he and any baggage belonging to him or under his control may be searched with a view to ascertaining whether he is doing so by the immigration officer or a person acting under the directions of the officer:

Provided that no woman or girl shall be searched except by a woman.

(4) An immigration officer may examine any documents produced pursuant to sub-paragraph (2)(*b*) above or found on a search under sub-paragraph (3), and may for that purpose detain them for any period not exceeding seven days; and if on examination of any document so produced or found the immigration officer is of the opinion that it may be needed in connection with proceedings on an appeal under this Act or for an offence, he may detain it until he is satisfied that it will not be so needed.

5. The Secretary of State may by order made by statutory instrument make provision for requiring passengers disembarking or embarking in the United Kingdom, or any class of such passengers, to produce to an immigration officer, if so required, landing or embarkation cards in such form as the Secretary of State may direct, and for requiring the owners or agents of ships and aircraft to supply such cards to those passengers.

Notice of leave to enter or of refusal of leave

6.—(1) Subject to sub-paragraph (3) below, where a person examined by an immigration officer under paragraph 2 above is to be given a limited leave to enter the United Kingdom or is to be refused leave, the notice giving or refusing leave shall be given not later than twelve hours after the conclusion of his examination (including any further examination) in pursuance of that paragraph; and if notice giving or refusing leave is not given him before the end of those twelve hours, he shall (if not patrial) be deemed to have been given indefinite leave to enter the United Kingdom and the immigration officer shall as soon as may be give him written notice of that leave.

(2) Where on a person's examination under paragraph 2 above he is given notice of leave to enter the United Kingdom, then at any time before the end of twelve hours from the conclusion of the examination he may be given a further notice in writing by an immigration officer cancelling the earlier notice and refusing him leave to enter.

(3) Where in accordance with this paragraph a person is given notice refusing him leave to enter the United Kingdom, that notice may at any time be cancelled by notice in writing given him by an immigration officer; and where a person is given a notice of cancellation under this sub-paragraph, the immigration officer may at the same time give him a limited leave to enter, but in the absence of a notice giving a limited leave the notice of cancellation shall be deemed to be a notice giving him indefinite leave to enter.

(4) Where an entrant is a member of a party in charge of a person appearing to the immigration officer to be a responsible person, any notice to be given in relation to that entrant in accordance with this paragraph shall be duly given if delivered to the person in charge of the party.

Power to require medical examination after entry

7. If, on a person's examination by an immigration officer under paragraph 2 above, the immigration officer—

(*a*) determines that he may be given leave to enter the United Kingdom; but

(*b*) is of opinion, on the advice of a medical inspector or, where no medical inspector is available, on that of any other fully qualified medical practitioner, that a further medical test or examination may be required in the interests of public health;

then the immigration officer, on giving that person leave to enter the United Kingdom, may by notice in writing require him to report his arrival to [[1]such medical officer of health] [[1]the chief administrative medical officer of such Health Board] as may be specified in the notice and thereafter to attend at such place and time, and submit to such test or examination (if any), as that medical officer [[2]of health] may require.

Para. 7 amended as to the functions of a medical officer of health (N.I.) by S.R. & O. (N.I.) 1973/256

Removal of persons refused leave to enter and illegal entrants

8.—(1) Where a person arriving in the United Kingdom is refused leave to enter, an immigration officer may, subject to sub-paragraph (2) below—

(*a*) give the captain of the ship or aircraft in which he arrives directions requiring the captain to remove him from the United Kingdom in that ship or aircraft; or

(*b*) give the owners or agents of that ship or aircraft directions requiring them to remove him from the United Kingdom in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or

(*c*) give those owners or agents directions requiring them to make arrangements for his removal from the United Kingdom in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—

(i) a country of which he is a national or citizen; or

(ii) a country or territory in which he has obtained a passport or other document of identity; or

(iii) a country or territory in which he embarked for the United Kingdom; or

(iv) a country or territory to which there is reason to believe that he will be admitted.

---

[1]Words "the chief" to "Health Board" substituted for words "such medical officer of health" (S.) by National Health Service (Scotland) Act 1972 (c. 58), Sch. 6 para. 156

[2]Words repealed (S.) by National Health Service (Scotland) Act 1972 (c. 58), Sch. 6 para. 156, Sch. 7 Pt. II and N.I. by S.R. & O. (N.I.) 1973/256

(2) No directions shall be given under this paragraph in respect of anyone after the expiration of two months beginning with the date on which he was refused leave to enter the United Kingdom.

9. Where an illegal entrant is not given leave to enter or remain in the United Kingdom, an immigration officer may give any such directions in respect of him as in a case within paragraph 8 above are authorised by paragraph 8(1).

10.—(1) Where it appears to the Secretary of State either—

(*a*) that directions might be given in respect of a person under paragraph 8 or 9 above, but that it is not practicable for them to be given or that, if given, they would be ineffective; or

(*b*) that directions might have been given in respect of a person under paragraph 8 above but that the time limited by paragraph 8(2) has passed;

then the Secretary of State may give to the owners or agents of any ship or aircraft any such directions in respect of that person as are authorised by paragraph 8(1)(*c*).

(2) Where the Secretary of State may give directions for a person's removal in accordance with sub-paragraph (1) above, he may instead give directions for his removal in accordance with arrangements to be made by the Secretary of State to any country or territory to which he could be removed under sub-paragraph (1).

(3) The costs of complying with any directions given under this paragraph shall be defrayed by the Secretary of State.

11. A person in respect of whom directions are given under any of paragraphs 8 to 10 above may be placed, under the authority of an immigration officer, on board any ship or aircraft in which he is to be removed in accordance with the directions.

Seamen and aircrews

12.—(1) If, on a person's examination by an immigration officer under paragraph 2 above, the immigration officer is satisfied that he has come to the United Kingdom for the purpose of joining a ship or aircraft as a member of the crew, then the immigration officer may limit the duration of any leave he gives that person to enter the United Kingdom by requiring him to leave the United Kingdom in a ship or aircraft specified or indicated by the notice giving leave.

(2) Where a person (not being patrial) arrives in the United Kingdom for the purpose of joining a ship or aircraft as a member of the crew and, having been given leave to enter as mentioned in sub-paragraph (1) above, remains beyond the time limited by that leave, or is reasonably suspected by an immigration officer of intending to do so, an immigration officer may—

(*a*) give the captain of that ship or aircraft directions requiring the captain to remove him from the United Kingdom in that ship or aircraft; or

(*b*) give the owners or agents of that ship or aircraft directions requiring them to remove him from the United Kingdom in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or

(*c*) give those owners or agents directions requiring them to make arrangements for his removal from the United Kingdom in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—

(i) a country of which he is a national or citizen; or

(ii) a country or territory in which he has obtained a passport or other document of identity; or

(iii) a country or territory in which he embarked for the United Kingdom; or

(iv) a country or territory where he was engaged as a member of the crew of the ship or aircraft which he arrived in the United Kingdom to join; or

(v) a country or territory to which there is reason to believe that he will be admitted.

13.—(1) Where a person being a member of the crew of a ship or aircraft is examined by an immigration officer under paragraph 2 above, the immigration officer may limit the duration of any leave he gives that person to enter the United Kingdom—

(*a*) in the manner authorised by paragraph 12(1) above; or

(*b*) if that person is to be allowed to enter the United Kingdom in order to receive hospital treatment, by requiring him, on completion of that treatment, to leave the United Kingdom in accordance with arrangements to be made for his repatriation; or

(*c*) by requiring him to leave the United Kingdom within a specified period in accordance with arrangements to be made for his repatriation.

(2) Where a person (not being patrial) arrives in the United Kingdom as a member of the crew of a ship or aircraft, and either—

(A) having lawfully entered the United Kingdom without leave by virtue of section 8(1) of this Act, he remains without leave beyond the time allowed by section 8(1), or is reasonably suspected by an immigration officer of intending to do so; or

(B) having been given leave limited as mentioned in subparagraph (1) above, he remains beyond the time limited by that leave, or is reasonably suspected by an immigration officer of intending to do so;

an immigration officer may—

(*a*) give the captain of the ship or aircraft in which he arrived directions requiring the captain to remove him from the United Kingdom in that ship or aircraft; or

(*b*) give the owners or agents of that ship or aircraft directions requiring them to remove him from the United Kingdom in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or

(*c*) give those owners or agents directions requiring them to make arrangements for his removal from the United Kingdom in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—

(i) a country of which he is a national or citizen; or

(ii) a country or territory in which he has obtained a passport or other document of identity; or

(iii) a country in which he embarked for the United Kingdom; or

(iv) a country or territory in which he was engaged as a member of the crew of the ship or aircraft in which he arrived in the United Kingdom; or

(v) a country or territory to which there is reason to believe that he will be admitted.

14.—(1) Where it appears to the Secretary of State that directions might be given in respect of a person under paragraph 12 or 13 above, but that it is not practicable for them to be given or that, if given, they would be ineffective, then the Secretary of State may give to the owners or agents of any ship or aircraft any such directions in respect of that person as are authorised by paragraph 12(2)(*c*) or 13(2)(*c*).

(2) Where the Secretary of State may give directions for a person's removal in accordance with sub-paragraph (1) above, he may instead give directions for his removal in accordance with arrangements to be made by the Secretary of State to any country or territory to which he could be removed under sub-paragraph (1).

(3) The costs of complying with any directions given under this paragraph shall be defrayed by the Secretary of State.

15. A person in respect of whom directions are given under any of paragraphs 12 to 14 above may be placed, under the authority of an immigration officer, on board any ship or aircraft in which he is to be removed in accordance with the directions.

Detention of persons liable to examination or removal

16.—(1) A person who may be required to submit to examination under paragraph 2 above may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter.

(2) A person in respect of whom directions may be given under any of paragraphs 8 to 14 above may be detained under the authority of an immigration officer pending the giving of directions and pending his removal in pursuance of any directions given.

(3) A person on board a ship or aircraft may, under the authority of an immigration officer, be removed from the ship or aircraft for detention under this paragraph; but if an immigration officer so requires the captain of a ship or aircraft shall prevent from disembarking in the United Kingdom any person who has arrived in the United Kingdom in the ship or aircraft and been refused leave to enter, and the captain may for that purpose detain him in custody on board the ship or aircraft.

(4) The captain of a ship or aircraft, if so required by an immigration officer, shall prevent from disembarking in the United Kingdom or before the directions for his removal have been fulfilled any person placed on board the ship or aircraft under paragraph 11 or 15 above, and the captain may for that purpose detain him in custody on board the ship or aircraft.

17.—(1) A person liable to be detained under paragraph 16 above may be arrested without warrant by a constable or by an immigration officer.

(2) If—

(*a*) a justice of the peace is by written information on oath satisfied that there is reasonable ground for suspecting that a person liable to be arrested under this paragraph is to be found on any premises; or

(*b*) in Scotland, a sheriff, or a magistrate or justice of the peace, having jurisdiction in the place where the premises are situated is by evidence on oath so satisfied;

he may grant a warrant authorising any constable acting for the police area in which the premises are situated, or in Northern Ireland any constable, at any time or times within one month from the date of the warrant to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting that person.

18.—(1) Persons may be detained under paragraph 16 above in such places as the Secretary of State may direct (when not detained in accordance with paragraph 16 on board a ship or aircraft).

(2) Where a person is detained under paragraph 16, any immigration officer, constable or prison officer, or any other person authorised by the Secretary of State, may take all such steps as may be reasonably necessary for photographing, measuring or otherwise identifying him.

(3) Any person detained under paragraph 16 may be taken in the custody of a constable, or of any person acting under the authority of an immigration officer, to and from any place where his attendance is required for the purpose of ascertaining his citizenship or nationality or of making arrangements for his admission to a country or territory other than the United Kingdom, or where he is required to be for any other purpose connected with the operation of this Act.

(4) A person shall be deemed to be in legal custody at any time when he is detained under paragraph 16 or is being removed in pursuance of sub-paragraph (3) above.

19.—(1) Where a person is refused leave to enter the United Kingdom and directions are given in respect of him under paragraph 8 or 10 above, then subject to the provisions of this paragraph the owners or agents of the ship or aircraft in which he arrived shall be liable to pay the Secretary of State on demand any expenses incurred by the latter in respect of the custody, accommodation or maintenance of that person at any time after his arrival while he was detained or liable to be detained under paragraph 16 above.

(2) Sub-paragraph (1) above shall not apply to expenses in respect of a person who, when he arrived in the United Kingdom, held a certificate of patriality or a current entry clearance or was the person named in a current work permit; and for this purpose a document purporting to be a certificate of patriality, entry clearance or work permit is to be regarded as being one unless its falsity is reasonably apparent.

(3) If, before the directions for a person's removal under paragraph 8 or 10 above have been carried out, he is given leave to enter the United Kingdom, or if he is afterwards given that leave in consequence of the determination in his favour of an appeal under this Act (being an appeal against a refusal of leave to enter by virtue of which the directions were given), or it is determined on an appeal under this Act that he does not require leave to enter (being an appeal occasioned by such a refusal), no sum shall be

demanded under subparagraph (1) above for expenses incurred in respect of that person and any sum already demanded and paid shall be refunded.

(4) Sub-paragraph (1) above shall not have effect in relation to directions which, in consequence of an appeal under this Act, have ceased to have effect or are for the time being of no effect; and the expenses to which that sub-paragraph applies include expenses in conveying the person in question to and from the place where he is detained or accommodated unless the journey is made for the purpose of attending an appeal by him under this Act.

20.—(1) Subject to the provisions of this paragraph, in either of the following cases, that is to say,—

(*a*) where directions are given in respect of an illegal entrant under paragraph 9 or 10 above; and

(*b*) where a person has lawfully entered the United Kingdom without leave by virtue of section 8(1) of this Act, but directions are given in respect of him under paragraph 13(2)(A) above or, in a case within paragraph 13(2)(A), under paragraph 14;

the owners or agents of the ship or aircraft in which he arrived in the United Kingdom shall be liable to pay the Secretary of State on demand any expenses incurred by the latter in respect of the custody, accommodation or maintenance of that person at any time after his arrival while he was detained or liable to be detained under paragraph 16 above.

(2) If, before the directions for a person's removal from the United Kingdom have been carried out, he is given leave to remain in the United Kingdom, no sum shall be demanded under sub-paragraph (1) above for expenses incurred in respect of that person and any sum already demanded and paid shall be refunded.

(3) Sub-paragraph (1) above shall not have effect in relation to directions which, in consequence of an appeal under this Act, are for the time being of no effect; and the expenses to which that sub-paragraph applies include expenses in conveying the person in question to and from the place where he is detained or accommodated unless the journey is made for the purpose of attending an appeal by him under this Act.

Temporary admission or release of persons liable to detention

21.—(1) A person liable to detention or detained under paragraph 16 above may, under the written authority of an immigration officer, be temporarily admitted to the United Kingdom without being detained or be released from detention; but this shall not prejudice a later exercise of the power to detain him.

(2) So long as a person is at large in the United Kingdom by virtue of this paragraph, he shall be subject to such restrictions as to residence and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by an immigration officer.

22.—(1) A person detained under paragraph 16(1) above pending examination may, if seven days have elapsed since the date of his arrival in the United Kingdom, be released on bail by an adjudicator on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before an immigration officer at a time and place named in the recognizance or bail bond or at such other time or place as may in the meantime be notified to him in writing by an immigration officer.

(2) The conditions of a recognizance or bail bond taken under this paragraph may include conditions appearing to the adjudicator to be likely to result in the appearance of the person bailed at the required time and place; and any recognizance shall be with or without sureties as the adjudicator may determine.

(3) In any case in which an adjudicator has power under this paragraph to release a person on bail, the adjudicator may, instead of taking the bail, fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as may be specified by the adjudicator; and on the recognizance or bail bond being so taken the person to be bailed shall be released.

23.—(1) Where a recognizance entered into under paragraph 22 above appears to an adjudicator to be forfeited, the adjudicator may by order declare it to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound or such part of it, if any, as the adjudicator thinks fit; and an order under this sub-paragraph shall specify a magistrates' court or, in Northern Ireland, court of summary jurisdiction, and—

(*a*) the recognizance shall be treated for the purposes of collection, enforcement and remission of the sum forfeited as having been forfeited by the court so specified; and

(*b*) the adjudicator shall, as soon as practicable, give particulars of the recognizance to the clerk of that court.

(2) Where a person released on bail under paragraph 22 above as it applies in Scotland fails to comply with the terms of his bail bond, an adjudicator may declare the bail to be forfeited, and any bail so forfeited shall be transmitted by the adjudicator to the sheriff court having jurisdiction in the area where the proceedings took place, and shall be treated as having been forfeited by that court.

(3) Any sum the payment of which is enforceable by a magistrates' court in England or Wales by virtue of this paragraph shall be treated for the purposes of the Justices of the Peace Act 1949 and, in particular, section 27 thereof as being due under a recognizance forfeited by such a court . . .[1] 1949 c. 101.

(4) Any sum the payment of which is enforceable by virtue of this paragraph by a court of summary jurisdiction in Northern Ireland shall, for the purposes of section 20(5) of the Administration of Justice Act (Northern Ireland) 1954, be treated as a forfeited recognizance. 1954 c. 9 (N.I.)

24.—(1) An immigration officer or constable may arrest without warrant a person who has been released by virtue of paragraph 22 above—

(*a*) if he has reasonable grounds for believing that that person is likely to break the condition of his recognizance or bail bond that he will appear at the time and place required or to break any other condition of it, or has reasonable ground to suspect that that person is breaking or has broken any such other condition; or

(*b*) if, a recognizance with sureties having been taken, he is notified in writing by any surety of the surety's belief that that person is likely to break the first-mentioned condition, and of the surety's wish for that reason to be relieved of his obligations as a surety;

[1]Words repealed by Criminal Justice Act 1972 (c. 71), Sch. 6 Pt. II

and paragraph 17(2) above shall apply for the arrest of a person under this paragraph as it applies for the arrest of a person under paragraph 17.

(2) A person arrested under this paragraph—

(*a*) if not required by a condition on which he was released to appear before an immigration officer within twenty-four hours after the time of his arrest, shall as soon as practicable be brought before an adjudicator or, if that is not practicable within those twenty-four hours, before a justice of the peace acting for the petty sessions area in which he is arrested or, in Scotland, the sheriff; and

(*b*) if required by such a condition to appear within those twenty-four hours before an immigration officer, shall be brought before that officer.

(3) An adjudicator, justice of the peace or sheriff before whom a person is brought by virtue of sub-paragraph (2)(*a*) above—

(*a*) if of the opinion that that person has broken or is likely to break any condition on which he was released, may either—

(i) direct that he be detained under the authority of the person by whom he was arrested; or

(ii) release him, on his original recognizance or on a new recognizance, with or without sureties, or, in Scotland, on his original bail or on new bail; and

(*b*) if not of that opinion, shall release him on his original recognizance or bail.

25. The power to make rules of procedure conferred by section 22 of this Act shall include power to make rules with respect to applications to an adjudicator under paragraphs 22 to 24 above and matters arising out of such applications.

Supplementary duties of those connected with ships or aircraft or with ports

26.—(1) The owners or agents of a ship or aircraft employed to carry passengers for reward shall not, without the approval of the Secretary of State, arrange for the ship or aircraft to call at a port in the United Kingdom other than a port of entry for the purpose of disembarking passengers, if any of the passengers on board may not enter the United Kingdom without leave and have not been given leave, or for the purpose of embarking passengers unless the owners or agents have reasonable cause to believe all of them to be patrial.

(2) The Secretary of State may from time to time give written notice to the owners or agents of any ships or aircraft designating control areas for the embarkation or disembarkation of passengers in any port in the United Kingdom, and specifying the conditions and restrictions (if any) to be observed in any control area; and where by notice given to any owners or agents a control area is for the time being designated for the embarkation or disembarkation of passengers at any port, the owners or agents shall take all reasonable steps to secure that, in the case of their ships or aircraft, passengers do not embark or disembark, as the case may be, at the port outside the control area and that any conditions or restrictions notified to them are observed.

(3) The Secretary of State may also from time to time give to any persons concerned with the management of a port in the United Kingdom written notice designating control areas in the port and specifying conditions or restrictions to be observed in any control area; and any such person shall take all reasonable steps to secure that any conditions or restrictions as notified to him are observed..

27.—(1) The captain of a ship or aircraft arriving in the United Kingdom—

(*a*) shall take such steps as may be necessary to secure that persons on board do not disembark there unless either they have been examined by an immigration officer, or they disembark in accordance with arrangements approved by an immigration officer, or they are members of the crew who may lawfully enter the United Kingdom without leave by virtue of section 8(1) of this Act; and

(*b*) where the examination of persons on board is to be carried out on the ship or aircraft, shall take such steps as may be necessary to secure that those to be examined are presented for the purpose in an orderly manner.

(2) The Secretary of State may by order made by statutory instrument make provision for requiring captains of ships or aircraft arriving in the United Kingdom, or of such of them as arrive from or by way of countries or places specified in the order, to furnish to immigration officers—

(*a*) a passenger list showing the names and nationality or citizenship of passengers arriving on board the ship or aircraft;

(*b*) particulars of members of the crew of the ship or aircraft;

and for enabling an immigration officer to dispense with the furnishing of any such list or particulars.

PART II

EFFECT OF APPEALS

Stay on directions for removal

28.—(1) Where a person in the United Kingdom appeals under section 13(1) of this Act on being refused leave to enter, any directions previously given by virtue of the refusal for his removal from the United Kingdom shall cease to have effect, except in so far as they have already been carried out, and no directions shall be so given so long as the appeal is pending.

(2) Where a person in the United Kingdom appeals under section 16 or 17 of this Act against any directions given under Part I of this Schedule for his removal from the United Kingdom, those directions, except in so far as they have already been carried out, shall be of no effect so long as the appeal is pending.

(3) Notwithstanding sub-paragraph (1) or (2) above, the provisions of Part I of this Schedule with respect to detention and persons liable to detention shall apply to a person appealing under section 13(1), 16 or 17 of this Act as if there were in force directions for his removal from the United Kingdom, except that he shall not be detained on board a ship or aircraft so as to compel him to leave the United Kingdom while the appeal is pending.

(4) In calculating the period of two months limited by paragraph 8(2) above for the giving of directions under that paragraph for the removal of a person from the United Kingdom, there shall be disregarded any period during which there is pending an appeal by him under section 13(1) or 17 of this Act.

(5) For purposes of sub-paragraphs (1) to (3) above (but not for purposes of sub-paragraph (4)), where an appeal to an adjudicator is dismissed, an appeal shall not be regarded as pending unless forthwith after the dismissal—

(*a*) the appellant duly gives notice of appeal against the determination of the adjudicator; or

(*b*) in a case in which leave to appeal against that determination is required and the adjudicator has power to grant leave, the appellant duly applies for and obtains the leave of the adjudicator.

(6) Where directions are given under Part I of this Schedule for anyone's removal from the United Kingdom, and directions are also so given for the removal with him of persons belonging to his family, then if any of them appeals under section 13(1), 16 or 17 of this Act, the appeal shall have the like effect under this paragraph in relation to the directions given in respect of each of the others as it has in relation to the directions given in respect of the appellant.

Grant of bail pending appeal

29.—(1) Where a person (in the following provisions of this Schedule referred to as "an appellant") has an appeal pending under section 13(1), 16 or 17 of this Act and is for the time being detained under Part I of this Schedule, he may be released on bail in accordance with this paragraph.

(2) An immigration officer not below the rank of chief immigration officer or a police officer not below the rank of inspector may release an appellant on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before an adjudicator or the Appeal Tribunal at a time and place named in the recognizance or bail bond.

(3) An adjudicator may release an appellant on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before that or any other adjudicator or the Appeal Tribunal at a time and place named in the recognizance or bail bond; and where an adjudicator dismisses an appeal but grants leave to the appellant to appeal to the Tribunal, or, in a case in which leave to appeal is not required, the appellant has duly given notice of appeal to the Tribunal, the adjudicator shall, if the appellant so requests, exercise his powers under this sub-paragraph.

(4) Where an appellant has duly applied for leave to appeal to the Appeal Tribunal, the Tribunal may release him on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before the Tribunal at a time and place named in the recognizance or bail bond; and where—

(*a*) the Tribunal grants leave to an appellant to appeal to the Tribunal; or

(*b*) in a case in which leave to appeal is not required, the appellant has duly given notice of appeal to the Tribunal;

the Tribunal shall, if the appellant so requests, release him as aforesaid.

(5) The conditions of a recognizance or bail bond taken under this paragraph may include conditions appearing to the person fixing the bail to be likely to result in the appearance of the appellant at the time and place

named; and any recognizance shall be with or without sureties as that person may determine.

(6) In any case in which an adjudicator or the Tribunal has power or is required by this paragraph to release an appellant on bail, the adjudicator or Tribunal may, instead of taking the bail, fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as may be specified by the adjudicator or the Tribunal; and on the recognizance or bail bond being so taken the appellant shall be released.

Restrictions on grant of bail

30.—(1) An appellant shall not be released under paragraph 29 above without the consent of the Secretary of State if directions for the removal of the appellant from the United Kingdom are for the time being in force, or the power to give such directions is for the time being exercisable.

(2) Notwithstanding paragraph 29(3) or (4) above, an adjudicator and the Tribunal shall not be obliged to release an appellant unless the appellant enters into a proper recognizance, with sufficient and satisfactory sureties if required, or in Scotland sufficient and satisfactory bail is found if so required; and an adjudicator and the Tribunal shall not be obliged to release an appellant if it appears to the adjudicator or the Tribunal, as the case may be—

(*a*) that the appellant, having on any previous occasion been released on bail (whether under paragraph 24 or under any other provision), has failed to comply with the conditions of any recognizance or bail bond entered into by him on that occasion;

(*b*) that the appellant is likely to commit an offence unless he is retained in detention;

(*c*) that the release of the appellant is likely to cause danger to public health;

(*d*) that the appellant is suffering from mental disorder and that his continued detention is necessary in his own interests or for the protection of any other person; or

(*e*) that the appellant is under the age of seventeen, that arrangements ought to be made for his care in the event of his release and that no satisfactory arrangements for that purpose have been made.

Forfeiture of recognizances

31.—(1) Where under paragraph 29 above (as it applies in England and Wales or in Northern Ireland) a recognizance is entered into conditioned for the appearance of an appellant before an adjudicator or the Tribunal, and it appears to the adjudicator or the Tribunal, as the case may be, to be forfeited, the adjudicator or Tribunal may by order declare it to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound or such part of it, if any, as the adjudicator or Tribunal thinks fit.

(2) An order under this paragraph shall, for the purposes of this sub-paragraph, specify a magistrates' court or, in Northern Ireland, court of summary jurisdiction; and the recognizance shall be treated for the purposes

of collection, enforcement and remission of the sum forfeited as having been forfeited by the court so specified.

(3) Where an adjudicator or the Tribunal makes an order under this paragraph the adjudicator or Tribunal shall, as soon as practicable, give particulars of the recognizance to the clerk of the court specified in the order in pursuance of sub-paragraph (2) above.

(4) Any sum the payment of which is enforceable by a magistrates' court in England or Wales by virtue of this paragraph shall be treated for the purposes of the Justices of the Peace Act 1949 and, in particular, section 27 thereof as being due under a recognizance forfeited by such a court . . .[1]

1949 c. 101.

(5) Any sum the payment of which is enforceable by virtue of this paragraph by a court of summary jurisdiction in Northern Ireland shall, for the purposes of section 20(5) of the Administration of Justice Act (Northern Ireland) 1954, be treated as a forfeited recognizance.

1954 c. 9 (N.I.)

32. Where under paragraph 29 above (as it applies in Scotland) a person released on bail fails to comply with the terms of a bail bond conditioned for his appearance before an adjudicator or the Tribunal, the adjudicator or Tribunal may declare the bail to be forfeited, and any bail so forfeited shall be transmitted by the adjudicator or the Tribunal to the sheriff court having jurisdiction in the area where the proceedings took place, and shall be treated as having been forfeited by that court.

Arrest of appellants released on bail

33.—(1) An immigration officer or constable may arrest without warrant a person who has been released by virtue of this Part of this Schedule—

(*a*) if he has reasonable grounds for believing that that person is likely to break the condition of his recognizance or bail bond that he will appear at the time and place required or to break any other condition of it, or has reasonable ground to suspect that that person is breaking or has broken any such other condition; or

(*b*) if, a recognizance with sureties having been taken, he is notified in writing by any surety of the surety's belief that that person is likely to break the first-mentioned condition, and of the surety's wish for that reason to be relieved of his obligations as a surety;

and paragraph 17(2) above shall apply for the arrest of a person under this paragraph as it applies for the arrest of a person under paragraph 17.

(2) A person arrested under this paragraph—

(*a*) if not required by a condition on which he was released to appear before an adjudicator or Tribunal within twenty-four hours after the time of his arrest, shall as soon as practicable be brought before an adjudicator or, if that is not practicable within those twenty-four hours, before a justice of the peace acting for the petty sessions area in which he is arrested or, in Scotland, the sheriff; and

(*b*) if required by such a condition to appear within those twenty-four hours before an adjudicator or before the Tribunal, shall be brought before that adjudicator or before the Tribunal, as the case may be.

[1]Words repealed by Criminal Justice Act 1972 (c. 71), Sch. 6 Pt. II

(3) An adjudicator, justice of the peace or sheriff before whom a person is brought by virtue of sub-paragraph (2)(*a*) above—

(*a*) if of the opinion that that person has broken or is likely to break any condition on which he was released, may either—

(i) direct that he be detained under the authority of the person by whom he was arrested; or

(ii) release him on his original recognizance or on a new recognizance, with or without sureties, or, in Scotland, on his original bail or on new bail; and

(*b*) if not of that opinion, shall release him on his original recognizance or bail.

SCHEDULE 3

Section 5.

SUPPLEMENTARY PROVISIONS AS TO DEPORTATION

Removal of persons liable to deportation

1.—(1) Where a deportation order is in force against any person, the Secretary of State may give directions for his removal to a country or territory specified in the directions being either—

(*a*) a country of which he is a national or citizen; or

(*b*) a country or territory to which there is reason to believe that he will be admitted.

(2) The directions under sub-paragraph (1) above may be either—

(*a*) directions given to the captain of a ship or aircraft about to leave the United Kingdom requiring him to remove the person in question in that ship or aircraft; or

(*b*) directions given to the owners or agents of any ship or aircraft requiring them to make arrangements for his removal in a ship or aircraft specified or indicated in the directions; or

(*c*) directions for his removal in accordance with arrangements to be made by the Secretary of State.

(3) In relation to directions given under this paragraph, paragraphs 11 and 16(4) of Schedule 2 to this Act shall apply, with the substitution of references to the Secretary of State for references to an immigration officer, as they apply in relation to directions for removal given under paragraph 8 of that Schedule.

(4) The Secretary of State, if he thinks fit, may apply in or towards payment of the expenses of or incidental to the voyage from the United Kingdom of a person against whom a deportation order is in force, or the maintenance until departure of such a person and his dependants, if any, any money belonging to that person; and except so far as they are paid as aforesaid, those expenses shall be defrayed by the Secretary of State.

Detention or control pending deportation

2.—(1) Where a recommendation for deportation made by a court is in force in respect of any person, and that person is neither detained in pursuance of the sentence or order of any court nor for the time being released on bail by any court having power so to release him, he shall, unless the court by which the recommendation is made otherwise directs, be detained pending the making of a deportation order in pursuance of the recommendation, unless the Secretary of State directs him to be released pending further consideration of his case.

(2) Where notice has been given to a person in accordance with regulations under section 18 of this Act of a decision to make a deportation order against him, and he is neither detained in pursuance of the sentence or order of a court nor for the time being released on bail by a court having power so to release him, he may be detained under the authority of the Secretary of State pending the making of the deportation order.

(3) Where a deportation order is in force against any person, he may be detained under the authority of the Secretary of State pending his removal or departure from the United Kingdom (and if already detained by virtue of sub-paragraph (1) or (2) above when the order is made, shall continue to be detained unless the Secretary of State directs otherwise).

(4) In relation to detention under sub-paragraph (2) or (3) above, paragraphs 17 and 18 of Schedule 2 to this Act shall apply as they apply in relation to detention under paragraph 16 of that Schedule.

(5) A person liable to be detained under sub-paragraph (2) or (3) above shall, while not so detained, be subject to such restrictions as to residence and as to reporting to the police as may from time to time be notified to him in writing by the Secretary of State.

Effect of appeals

3. Part II of Schedule 2 to this Act, so far as it relates to appeals under section 16 or 17, shall apply for purposes of this Schedule as if the references in paragraph 28(2), (3) and (6) and in paragraph 29(1) to Part I of that Schedule were references to this Schedule; and paragraphs 29 to 33 shall apply in like manner in relation to appeals under section 15(1)(*a*).

Section 9.

SCHEDULE 4

INTEGRATION WITH UNITED KINGDOM LAW OF IMMIGRATION LAW OF ISLANDS

Leave to enter

1.—(1) Where under the immigration laws of any of the Islands a person is or has been given leave to enter or remain in the island, or is or has been refused leave, this Act shall have effect in relation to him, if he is not patrial, as if the leave were leave (of like duration) given under this Act to enter or

remain in the United Kingdom, or, as the case may be, as if he had under this Act been refused leave to enter the United Kingdom.

(2) Where under the immigration laws of any of the Islands a person has a limited leave to enter or remain in the island subject to any such conditions as are authorised in the United Kingdom by section 3(1) of this Act (being conditions imposed by notice given to him, whether the notice of leave or a subsequent notice), then on his coming to the United Kingdom this Act shall apply, if he is not patrial, as if those conditions related to his stay in the United Kingdom and had been imposed by notice under this Act.

(3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, anything having effect in the United Kingdom by virtue of either of those sub-paragraphs may in relation to the United Kingdom be varied or revoked under this Act in like manner, and subject to the like appeal (if any), as if it had originated under this Act as mentioned in that sub-paragraph.

(4) Where anything having effect in the United Kingdom by virtue of sub-paragraph (1) or (2) above ceases to have effect or is altered in effect as mentioned in sub-paragraph (3) or otherwise by anything done under this Act, sub-paragraph (1) or (2) shall not thereafter apply to it or, as the case may be, shall apply to it as so altered in effect.

(5) Nothing in this paragraph shall be taken as conferring on a person a right of appeal under this Act against any decision or action taken in any of the Islands.

2. Notwithstanding section 3(4) of this Act, leave given to a person under this Act to enter or remain in the United Kingdom shall not continue to apply on his return to the United Kingdom after an absence if he has during that absence entered any of the Islands in circumstances in which he is required under the immigration laws of that island to obtain leave to enter.

Deportation

3.—(1) Subject to sub-paragraph (2) below, where under the immigration laws of any of the Islands, a person is or has been ordered to leave the island and forbidden to return, then, if he is not patrial, this Act shall have effect in relation to him as if the order were a deportation order made against him under this Act.

(2) The Secretary of State shall not by virtue of sub-paragraph (1) above have power to revoke a deportation order made in any of the Islands, but may in any particular case direct that sub-paragraph (1) shall not apply in relation to an order so made; and nothing in this paragraph shall render it unlawful for a person in respect of whom such an order is in force in any of the Islands to enter the United Kingdom on his way from that island to a place outside the United Kingdom.

Illegal entrants

4. Notwithstanding anything in section 1(3) of this Act, it shall not be lawful for a person who is not patrial to enter the United Kingdom from any of the Islands where his presence was unlawful under the immigration laws of that island, unless he is given leave to enter.

Section 12.

SCHEDULE 5

THE ADJUDICATORS AND THE TRIBUNAL

PART I

THE ADJUDICATORS

1. There shall be such number of adjudicators as the Secretary of State may with the consent of the Minister for the Civil Service determine, and the Secretary of State shall appoint one of them as chief adjudicator.

2.—(1) An adjudicator shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.

(2) An adjudicator may at any time by notice in writing to the Secretary of State resign his office.

3. The Secretary of State shall pay—

(*a*) to the adjudicators, such remuneration and allowances as he may, with the approval of the Minister for the Civil Service, determine;

(*b*) as regards any of the adjudicators in whose case he may so determine with the approval of the Minister for the Civil Service, such pension, allowance or gratuity to or in respect of him, or such sums towards the provision of such pension, allowance or gratuity, as may be so determined;

and, if a person ceases to be an adjudicator and it appears to the Secretary of State that there are special circumstances which make it right that that person should receive compensation, the Secretary of State may, with the approval of the said Minister, pay to that person a sum of such amount as the Secretary of State may, with the approval of that Minister, determine.

1957 c. 20.

4. In Part III of Schedule 1 to the House of Commons Disqualification Act 1957 (which lists offices the holders of which are disqualified for membership of the House of Commons), and in the said Part III as it applies by virtue of Schedule 3 to that Act in relation to the Senate and House of Commons of Northern Ireland, there shall be inserted at the appropriate point the words "Adjudicator appointed for the purposes of the Immigration Act 1971".

5. The adjudicators shall sit at such times and in such places as the Secretary of State may direct; and the chief adjudicator shall allocate duties among the adjudicators and have such other functions as may be conferred on him by the Secretary of State.

PART II

THE TRIBUNAL

Members

6. The Tribunal shall consist of such number of members as the Lord Chancellor may determine, and the Lord Chancellor shall appoint one of them to be president.

7. The president and such number of the other members of the Tribunal as the Lord Chancellor may determine shall be barristers, advocates or solicitors, in each case of not less than seven years standing.

8.—(1) A member of the Tribunal shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.

(2) Any member of the Tribunal may at any time by notice in writing to the Lord Chancellor resign his office.

9. The Secretary of State shall pay—

(*a*) to the members of the Tribunal, such remuneration and allowances as he may, with the approval of the Minister for the Civil Service, determine;

(*b*) as regards any member in whose case he may so determine with the approval of the Minister for the Civil Service, such pension, allowance or gratuity to or in respect of him, or such sums towards the provision of such pension, allowance or gratuity, as may be so determined;

and, if a person ceases to be a member of the Tribunal and it appears to the Secretary of State that there are special circumstances which make it right that that person should receive compensation, the Secretary of State may, with the approval of the said Minister, pay to that person a sum of such amount as the Secretary of State may, with the approval of that Minister, determine.

10. In Part II of Schedule 1 to the House of Commons Disqualification Act 1957 (which lists bodies of which all members are disqualified for membership of the House of Commons), and in the said Part II as it applies by virtue of Schedule 3 to that Act in relation to the Senate and House of Commons of Northern Ireland, there shall be inserted at the appropriate point the words "The Immigration Appeal Tribunal". 1957 c. 20.

Proceedings

11. For the purpose of hearing and determining appeals under Part II of this Act or any matter preliminary or incidental to any such appeal, the Tribunal shall sit at such times and in such place or places as the Lord Chancellor may direct, and may sit in two or more divisions.

12. Subject to rules of procedure, the Tribunal shall be deemed to be duly constituted if it consists of three members (or a greater uneven number of members) of whom at least one is qualified as mentioned in paragraph 7 of this Schedule; and the determination of any question before the Tribunal shall be according to the opinion of the majority of the members hearing the case.

13. The Lord Chancellor may appoint members of the Tribunal who are qualified as mentioned in paragraph 7 of this Schedule to act on behalf of the president in his temporary absence or inability to act.

14. The president or, in his absence, the member qualified as mentioned in paragraph 7 of this Schedule (or, if there is more than one such member present, the senior of them) shall preside at a sitting of the Tribunal.

PART III

STAFF AND EXPENSES

15. The Secretary of State may appoint such officers and servants for the adjudicators and the Tribunal as he may, with the approval of the Minister for the Civil Service as to remuneration and numbers, determine.

16. The remuneration of officers and servants appointed as aforesaid, and such expenses of the adjudicators and the Tribunal as the Secretary of State may with the approval of the Minister for the Civil Service determine, shall be defrayed by the Secretary of State.

SCHEDULE 6

. . . . . .

The following provision has been omitted from the text for the reason stated below:—

Sch. 6 ... ... specifies enactments repealed by s. 34 of this Act.

25-26 ELIZABETH II

CHAPTER 52

An Act respecting immigration to Canada

[Assented to 5th August, 1977]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Immigration Act, 1976*.

INTERPRETATION

Definitions

2. (1) In this Act,

"adjudicator" «arbitre»

"adjudicator" means a person appointed or employed under the *Public Service Employment Act* for the purpose of carrying out the duties and functions of an adjudicator under this Act;

"admission" «admission»

"admission" means entry or landing;

"Board" «Commission»

"Board" means the Immigration Appeal Board established by section 59;

"Canadian citizen" «citoyen...»

"Canadian citizen" means a person who is a citizen within the meaning of the *Citizenship Act*;

"Chairman" «président»

"Chairman" means the Chairman of the Board;

"Convention refugee" «réfugié...»

"Convention refugee" means any person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside the country of his nationality and is unable or, by reason of such fear, is unwilling to avail himself of the protection of that country, or

25-26 ELIZABETH II

CHAPITRE 52

Loi concernant l'immigration au Canada

[Sanctionnée le 5 août 1977]

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: *Loi sur l'immigration de 1976*.

INTERPRÉTATION

Définitions

2. (1) Dans la présente loi

«admission» désigne l'autorisation de séjour ou le droit d'établissement; «admission» "admission"

«agent des visas» désigne un agent d'immigration en poste à l'étranger et autorisé par ordre du Ministre à délivrer des visas; «agent des visas» "visa officer"

«agent d'immigration» s'entend de la personne nommée ou désignée en vertu de l'article 110; «agent d'immigration» "immigration..."

«agent d'immigration supérieur» s'entend de l'agent d'immigration désigné à ce titre par ordre du Ministre pour exercer les fonctions prévues à la présente loi; «agent d'immigration supérieur» "senior..."

«arbitre» désigne l'arbitre en matière d'immigration nommé ou employé conformément à la *Loi sur l'emploi dans la Fonction publique* pour exercer les fonctions prévues à la présente loi; «arbitre» "adjudicator"

«autorisation de séjour» désigne l'autorisation accordée aux visiteurs; «autorisation de séjour» "entry"

«avis d'interdiction de séjour» désigne l'avis visé au paragraphe 32(6); «avis d'interdiction de séjour» "departure..."

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*b*) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of such fear, is unwilling to return to that country;

"departure notice" «*avis...*» "departure notice" means a notice issued pursuant to subsection 32(6);

"deportation order" «*ordonnance d'expulsion*» "deportation order" means a deportation order made under any of subsections 32(2), (5) or (6), 37(5) or (6), 40(10), 75(2) or 76(1) or (3);

"Deputy Minister" «*sous-ministre*» "Deputy Minister" means the deputy head of the department under which this Act is administered;

"employment" «*emploi*» "employment" means any activity for which a person receives or might reasonably be expected to receive valuable consideration;

"entry" «*autorisation...*» "entry" means lawful permission to come into Canada as a visitor;

"examination" «*examen*» "examination" means an interview conducted by an immigration officer of a person seeking to come into Canada at a port of entry;

"exclusion order" «*ordonnance d'exclusion*» "exclusion order" means an exclusion order made under any of subsections 32(5), 37(5), 75(2) or 76(1) or (3);

"family" «*famille*» "family" means the father and mother and any children who, by reason of age or disability, are, in the opinion of an immigration officer, mainly dependent upon the father or mother for support and, for the purpose of any provision of this Act and the regulations, includes such other classes of persons as are prescribed for the purpose of that provision;

"immigrant" «*immigrant*» "immigrant" means a person who seeks landing;

"immigrant station" «*poste...*» "immigrant station" means any place designated by the Minister for the examination, treatment or detention of persons for any purpose under this Act;

"immigration officer" «*agent d'immigration*» "immigration officer" means a person appointed or designated as an immigration officer pursuant to section 110;

"inadmissible class" «*catégories non admissibles*» "inadmissible class" means any of the classes of persons described in section 19;

«catégories non admissibles» "*inadmissible...*" «catégories non admissibles» ou «personnes non admissibles» désigne les personnes visées à l'article 19;

«citoyen canadien» "*Canadian...*" «citoyen canadien» a le sens que lui donne la *Loi sur la citoyenneté;*

«commissaire» "*member*" «commissaire» désigne un membre de la Commission;

«Commission» "*Board*" «Commission» désigne la Commission d'appel de l'immigration instituée par l'article 59;

«droit d'établissement» "*landing*" «droit d'établissement» désigne l'autorisation d'entrer au Canada pour y établir une résidence permanente;

«emploi» "*employment*" «emploi» désigne toute activité rétribuée, ou raisonnablement susceptible de l'être;

«examen» "*examination*" «examen» désigne l'entrevue qu'un agent d'immigration fait subir à une personne qui se présente à un point d'entrée dans le but d'entrer au Canada;

«famille» "*family*" «famille» désigne le père et la mère ainsi que les enfants qui, de l'avis d'un agent d'immigration, sont principalement à la charge de l'un ou l'autre en raison de leur âge ou d'une incapacité et, pour l'application d'une disposition donnée de la présente loi et des règlements, s'entend également des autres catégories de personnes prescrites aux fins de cette disposition;

«immigrant» "*immigrant*" «immigrant» désigne la personne qui sollicite le droit d'établissement;

«médecin» "*medical...*" «médecin» désigne un médecin agréé ou reconnu par ordre du ministre de la Santé nationale et du Bien-être social, pour exercer les pouvoirs que la présente loi confère aux médecins;

«membre d'équipage» "*member of a crew*" «membre d'équipage» désigne le responsable et le personnel affectés à un véhicule;

«Ministre» "*Minister*" «Ministre» désigne le membre du Conseil privé de la Reine pour le Canada désigné par le gouverneur en conseil pour agir en qualité de Ministre aux fins de la présente loi;

«ordonnance de refoulement» "*rejection...*" «ordonnance de refoulement» désigne l'ordonnance rendue en vertu du paragraphe 13(1);

POOR COPY
COPIE DE QUALITEE INFERIEURE

"landing" «*droit...*»	"landing" means lawful permission to come into Canada to establish permanent residence;	«ordonnance de renvoi» désigne l'ordonnance d'exclusion ou d'expulsion;	«ordonnance de renvoi» "*removal...*"
"master" «*responsable*»	"master" means the person in immediate charge or control of a vehicle;	«ordonnance d'exclusion» désigne l'ordonnance rendue en vertu des paragraphes 32(5), 37(5), 75(2), 76(1) ou (3);	«ordonnance d'exclusion» "*exclusion...*"
"medical officer" «*médecin*»	"medical officer" means a qualified medical practitioner authorized or recognized by order of the Minister of National Health and Welfare as a medical officer for the purposes of this Act;	«ordonnance d'expulsion» désigne l'ordonnance rendue en vertu des paragraphes 32(2), (5) ou (6), 37(5) ou (6), 40(10), 75(2) ou 76(1) ou (3);	«ordonnance d'expulsion» "*deportation...*"
"member" «*commissaire*»	"member" means a member of the Board;	«permis» désigne un permis en cours de validité, délivré en vertu du paragraphe 37(1);	«permis» "*permit*"
"member of a crew" «*membre d'équipage*»	"member of a crew" means any person, including a master, who is employed on board or forms part of the staff or crew of a vehicle;	«personnes appartenant à la catégorie de la famille» désigne les personnes à qui les règlements reconnaissent le droit de faire parrainer la demande de droit d'établissement par un citoyen canadien ou un résident permanent, appelé le répondant;	«personnes appartenant à la catégorie de la famille» "*member of the family class*"
"member of the family class" «*personnes appartenant à...*»	"member of the family class" means a person described in the regulations as a person whose application for landing may be sponsored by a Canadian citizen or by a permanent resident;	«point d'entrée» s'entend des lieux désignés par le Ministre pour l'examen des personnes en vertu de la présente loi;	«point d'entrée» "*port...*"
"Minister" «*Ministre*»	"Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council to act as the Minister for the purposes of this Act;	«poste d'attente» s'entend des lieux désignés par le Ministre aux fins d'examen, de traitement ou de détention pour l'application de la présente loi;	«poste d'attente» "*immigrant station*"
"owner" «*propriétaire*»	"owner", in respect of a vehicle, includes the agent of the owner of the vehicle and any other person having any interest in respect of the vehicle;	«prescrit» ou «réglementaire» signifie fixé ou déterminé par les règlements établis par le gouverneur en conseil;	«prescrit» ou «réglementaire» "*prescribed*"
"permanent resident" «*résident...*»	"permanent resident" means a person who (*a*) has been granted landing, (*b*) has not become a Canadian citizen, and (*c*) has not ceased to be a permanent resident pursuant to subsection 24(1);	«président» désigne le président de la Commission;	«président» "*Chairman*"
"permit" «*permis*»	"permit" means a subsisting permit issued under subsection 37(1);	«propriétaire» comprend, dans le cas d'un véhicule, le mandataire du propriétaire et toute personne qui a un droit dans le véhicule;	«propriétaire» "*owner*"
"port of entry" «*point...*»	"port of entry" means any place designated as a port of entry by the Minister for the examination of persons under this Act;	«réfugié au sens de la Convention» désigne toute personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques *a*) se trouve hors du pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays, ou *b*) qui, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ou, en raison de ladite crainte, ne veut y retourner;	«réfugié au sens de la Convention» "*Convention ..*"
"prescribed" «*prescrit...*»	"prescribed" means prescribed by regulations made by the Governor in Council;		
"rejection order" «*ordonnance de refoulement*»	"rejection order" means an order made under subsection 13(1);		
"removal order" «*ordonnance de renvoi*»	"removal order" means an exclusion order or a deportation order;		

POOR COPY
COPIE DE QUALITEE INFERIEURE

"senior immigration officer" *«agent d'immigration supérieur»*

"senior immigration officer" means an immigration officer designated by order of the Minister to perform or carry out any or all of the duties and functions of a senior immigration officer under this Act;

"transportation company" *«transporteur»*

"transportation company" means a person or group of persons carrying or providing for the transportation of persons,

(*a*) where the expression appears in subsection 90(2), sections 93 and 94 and paragraph 115(1)(*bb*), by vehicle, bridge, tunnel or otherwise, and

(*b*) in any other case, by vehicle or otherwise, but not by bridge or tunnel,

and includes any agent thereof and the Government of Canada or the government of any province of or municipality in Canada so carrying or providing for the transportation of persons;

"vehicle" *«véhicule»*

"vehicle" means any conveyance that may be used for transportation by sea, land or air;

"Vice-Chairman" *«vice-président»*

"Vice-Chairman" means a Vice-Chairman of the Board;

"visa" *«visa»*

"visa" means a document issued or a stamp impression made on a document by a visa officer;

"visa officer" *«agent des visas»*

"visa officer" means an immigration officer stationed outside Canada and authorized by order of the Minister to issue visas;

"visitor" *«visiteur»*

"visitor" means a person who is lawfully in Canada, or seeks to come into Canada, for a temporary purpose, other than a person who is

(*a*) a Canadian citizen,

(*b*) a permanent resident,

(*c*) a person in possession of a permit, or

(*d*) an immigrant authorized to come into Canada pursuant to paragraph 14(2)(*b*), 23(1)(*b*) or 32(3)(*b*).

«*résident permanent*» désigne la personne qui

(*a*) a obtenu le droit d'établissement,

(*b*) n'a pas acquis la citoyenneté canadienne, et

(*c*) n'a pas perdu son statut conformément au paragraphe 24(1);

«résident permanent» *"permanent..."*

«responsable» désigne la personne directement en charge d'un véhicule;

«responsable» *"master"*

«sous-ministre» désigne le sous-chef du ministère chargé de l'application de la présente loi;

«sous-ministre» *"Deputy Minister"*

«transporteur» désigne les personnes ou groupes de personnes et leurs mandataires ainsi que les gouvernements fédéral, provinciaux ou les municipalités du Canada qui transportent ou font transporter des personnes

(*a*) en recourant à des véhicules, à d'autres moyens ou en leur faisant emprunter un pont ou un tunnel, lorsque le terme «transporteur» se retrouve au paragraphe 90(2), aux articles 93 et 94 et à l'alinéa 115(1)*bb*), et

(*b*) en recourant à des véhicules ou à d'autres moyens, mais sans leur faire emprunter un pont ou un tunnel, lorsque le terme «transporteur» se retrouve ailleurs dans la présente loi;

«transporteur» *"transportation..."*

«véhicule» désigne tout moyen de transport maritime, terrestre ou aérien;

«véhicule» *"vehicle"*

«vice-président» désigne un vice-président de la Commission;

«vice-président» *"Vice-Chairman"*

«visa» désigne le document délivré ou le cachet apposé par un agent des visas;

«visa» *"visa"*

«visiteur» désigne toute personne qui, à titre temporaire, se trouve légalement au Canada ou cherche à y entrer, à l'exclusion

(*a*) des citoyens canadiens,

(*b*) des résidents permanents,

(*c*) des titulaires de permis, ou

(*d*) des immigrants visés aux alinéas 14(2)*b*), 23(1)*b*) ou 32(3)*b*).

«visiteur» *"visitor"*

Interpretation of "Convention"

(2) The term "Convention" in the expression "Convention refugee" refers to the United Nations Convention Relating to the Status of Refugees signed at Geneva on the

(2) Dans l'expression «réfugié au sens de la Convention», le terme «Convention» désigne la Convention des Nations-Unies relative au statut des réfugiés, signée à Genève le 28

Interprétation de «Convention»

POOR COPY
COPIE DE QUALITEE INFERIEURE

28th day of July, 1951 and includes the Protocol thereto signed at New York on the 31st day of January, 1967.

PART I

CANADIAN IMMIGRATION POLICY

Objectives

Immigration objectives

3. It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need

(*a*) to support the attainment of such demographic goals as may be established by the Government of Canada from time to time in respect of the size, rate of growth, structure and geographic distribution of the Canadian population;

(*b*) to enrich and strengthen the cultural and social fabric of Canada, taking into account the federal and bilingual character of Canada;

(*c*) to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad;

(*d*) to encourage and facilitate the adaptation of persons who have been granted admission as permanent residents to Canadian society by promoting cooperation between the Government of Canada and other levels of government and non-governmental agencies in Canada with respect thereto;

(*e*) to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities and international understanding;

(*f*) to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex;

(*g*) to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with

juillet 1951 et le protocole signé à New York le 31 janvier 1967.

PARTIE I

POLITIQUE CANADIENNE D'IMMIGRATION

Les objectifs

Objectifs en matière d'immigration

3. Il est, par les présentes, déclaré que la politique d'immigration du Canada, ainsi que les règles et règlements établis en vertu de la présente loi, sont conçus et mis en œuvre en vue de promouvoir ses intérêts sur le plan interne et international, en reconnaissant la nécessité

a) de favoriser la poursuite des objectifs démographiques établis par le gouvernement du Canada, relatifs au chiffre, au taux de croissance, à la composition et à la répartition géographique de la population canadienne;

b) d'enrichir et de consolider le patrimoine culturel et social du Canada, compte tenu de son caractère fédéral et bilingue;

c) de faciliter la réunion au Canada des citoyens canadiens et résidents permanents avec leurs proches parents de l'étranger;

d) d'encourager et de faciliter, grâce aux efforts conjugués du gouvernement fédéral, des autres niveaux de gouvernement et des organismes non gouvernementaux, l'adaptation à la société canadienne des personnes qui ont obtenu l'admission à titre de résidents permanents;

e) de faciliter le séjour au Canada de visiteurs en vue de promouvoir le commerce, le tourisme, les activités scientifiques et culturelles ainsi que la compréhension internationale;

f) de s'assurer que les personnes désireuses d'être admises au Canada à titre permanent ou temporaire soient soumises à des critères non discriminatoires en raison de la race, l'origine nationale ou ethnique, la couleur, la religion ou le sexe;

g) de remplir, envers les réfugiés, les obligations légales du Canada sur le plan international et de maintenir sa tradition

POOR COPY
COPIE DE QUALITEE INFERIEURE

respect to the displaced and the persecuted;

(*h*) to foster the development of a strong and viable economy and the prosperity of all regions in Canada;

(*i*) to maintain and protect the health, safety and good order of Canadian society; and

(*j*) to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity.

nelle attitude humanitaire à l'égard des personnes déplacées ou persécutées;

h) de stimuler le développement d'une économie florissante et assurer la prospérité dans toutes les régions du pays;

i) de maintenir et de garantir la santé, la sécurité et l'ordre au Canada; et

j) de promouvoir l'ordre et la justice sur le plan international en refusant aux personnes susceptibles de se livrer à des activités criminelles de se trouver en territoire canadien.

Principles

Principes

Where right to come into Canada

4. (1) A Canadian citizen and a permanent resident have a right to come into Canada except where, in the case of a permanent resident, it is established that that person is a person described in subsection 27(1).

4. (1) Tout citoyen canadien, ainsi que les résidents permanents non visés au paragraphe 27(1), ont le droit d'entrer au Canada.

Droit d'entrer au Canada

Where right to remain in Canada

(2) Subject to any other Act of Parliament, a Canadian citizen, a permanent resident and a Convention refugee while lawfully in Canada have a right to remain in Canada except where

(*a*) in the case of a permanent resident, it is established that that person is a person described in subsection 27(1); and

(*b*) in the case of a Convention refugee, it is established that that person is a person described in paragraph 19(1)(*c*), (*d*), (*e*), (*f*) or (*g*) or 27(1)(*c*) or (*d*) or 27(2)(*c*) or a person who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of

(i) more than six months has been imposed, or

(ii) five years or more may be imposed.

(2) Sous réserve des lois du Parlement, le citoyen canadien, le résident permanent ainsi que le réfugié au sens de la Convention qui se trouve légalement au Canada, ont le droit d'y demeurer à l'exception

a) du résident permanent visé au paragraphe 27(1); et

b) du réfugié au sens de la Convention qui tombe sous le coup des alinéas 19(1)*c*), *d*), *e*), *f*) ou *g*) ou 27(1)*c*) ou *d*) ou 27(2)*c*) ou qui, déclaré coupable d'une infraction prévue par une loi du Parlement,

(i) a été condamné à plus de six mois de prison, ou

(ii) est passible d'au moins cinq ans de prison.

Droit de demeurer au Canada

Rights of Indians

(3) A person who is registered as an Indian pursuant to the *Indian Act* has, whether or not he is a Canadian citizen, the same rights and obligations under this Act as a Canadian citizen.

(3) Tout Indien inscrit conformément à la *Loi sur les Indiens*, même s'il n'est pas citoyen canadien, a les mêmes droits et obligations qu'un citoyen canadien en vertu de la présente loi.

Droits des Indiens

Where privilege to come into or remain in Canada

5. (1) No person, other than a person described in section 4, has a right to come into or remain in Canada.

5. (1) Seules les personnes visées à l'article 4 ont le droit d'entrer au Canada et d'y demeurer.

Droit d'entrer ou de demeurer au Canada

Where immigrant shall be granted landing

(2) An immigrant shall be granted landing if he is not a member of an inadmissible class

(2) Le droit d'établissement doit être accordé à tout immigrant qui n'appartient

Octroi du droit d'établissement

POOR COPY
COPIE DE QUALITEE INFERIEURE

and otherwise meets the requirements of this Act and the regulations.

Where visitors may be granted entry or allowed to remain

(3) A visitor may be granted entry and allowed to remain in Canada during the period for which he was granted entry or for which he is otherwise authorized to remain in Canada if he meets the requirements of this Act and the regulations.

Selection of Immigrants

General principle of admissibility of immigrants

6. (1) Subject to this Act and the regulations, any immigrant including a Convention refugee, a member of the family class and an independent immigrant may be granted landing if he is able to establish to the satisfaction of an immigration officer that he meets the selection standards established by the regulations for the purpose of determining whether or not an immigrant will be able to become successfully established in Canada.

Displaced and persecuted

(2) Any Convention refugee and any person who is a member of a class designated by the Governor in Council as a class, the admission of members of which would be in accordance with Canada's humanitarian tradition with respect to the displaced and the persecuted, may be granted admission subject to such regulations as may be established with respect thereto and notwithstanding any other regulations made under this Act.

Levels of Immigration

Levels

7. The Minister, after consultation with the provinces concerning regional demographic needs and labour market considerations and after consultation with such other persons, organizations and institutions as he deems appropriate, shall lay before Parliament, not later than the sixtieth day before the commencement of each calendar year or, if Parliament is not then sitting, not later than the fifteenth day next thereafter that Parliament is sitting, a report specifying

(*a*) the number of immigrants that the Government of Canada deems it appropriate to admit during any specified period of time; and

pas à une catégorie non admissible et qui remplit les conditions posées par la présente loi et les règlements.

Octroi de l'autorisation de séjour aux visiteurs

(3) Le visiteur, qui remplit les conditions prévues à la présente loi et aux règlements, peut obtenir l'autorisation de séjour et demeurer au Canada pour une durée déterminée ou pour toute autre période autorisée.

Sélection des immigrants

Principe général d'admissibilité des immigrants

6. (1) Sous réserve de la présente loi et des règlements, tout immigrant, notamment un réfugié au sens de la Convention, une personne appartenant à la catégorie de la famille et un immigrant indépendant, peut obtenir le droit d'établissement s'il établit à la satisfaction de l'agent d'immigration qu'il répond aux normes réglementaires de sélection fixées en vue de déterminer l'aptitude des immigrants à s'établir avec succès au Canada.

Personnes déplacées ou persécutées

(2) Tout réfugié au sens de la Convention et toute personne d'une catégorie déclarée admissible par le gouverneur en conseil conformément à l'attitude traditionnellement humanitaire du Canada à l'égard des personnes déplacées ou persécutées, peuvent obtenir l'admission, sous réserve des règlements établis à cette fin et par dérogation à tous autres règlements établis en vertu de la présente loi.

Niveaux d'immigration

Niveaux

7. Le Ministre, après avoir consulté les provinces sur l'aspect régional des besoins démographiques et de la situation du marché du travail, ainsi que toutes autres personnes, organisations et institutions qu'il juge appropriées, dépose devant le Parlement, au plus tard le soixantième jour précédant le début de chaque année civile ou, si le Parlement ne siège pas, au plus tard le quinzième jour de la séance subséquente, un rapport indiquant

a) le nombre d'immigrants que le gouvernement canadien juge opportun d'admettre durant une période déterminée; et

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*b*) the manner in which demographic considerations have been taken into account in determining that number.

b) la manière dont les considérations démographiques ont été prises en ligne de compte pour fixer ce nombre.

PART II

ADMISSION TO CANADA

General Presumption

Burden of proof

8. (1) Where a person seeks to come into Canada, the burden of proving that he has a right to come into Canada or that his admission would not be contrary to this Act or the regulations rests on him.

Fardeau de la preuve

Presumption

(2) Every person seeking to come into Canada shall be presumed to be an immigrant until he satisfies the immigration officer examining him or the adjudicator presiding at his inquiry that he is not an immigrant.

Présomption

Visas and Special Authorizations

Applications for visas

9. (1) Except in such cases as are prescribed, every immigrant and visitor shall make an application for and obtain a visa before he appears at a port of entry.

Demande de visa

Assessment by visa officer

(2) Every person who makes an application for a visa shall be assessed by a visa officer for the purpose of determining whether the person appears to be a person who may be granted landing or entry, as the case may be.

Examen par l'agent des visas

Duty to answer questions

(3) Every person shall answer truthfully all questions put to him by a visa officer and shall produce such documentation as may be required by the visa officer for the purpose of establishing that his admission would not be contrary to this Act or the regulations.

Obligation de répondre aux questions

Issuance of visa

(4) Where a visa officer is satisfied that it would not be contrary to this Act or the regulations to grant landing or entry, as the case may be, to a person who has made an application pursuant to subsection (1), he may issue a visa to that person, for the purpose of identifying the holder thereof as an immigrant or visitor, as the case may be, who, in the opinion of the visa officer, meets the requirements of this Act and the regulations.

Délivrance de visa

PARTIE II

ADMISSION AU CANADA

Présomption d'ordre général

8. (1) Il appartient à la personne désireuse d'entrer au Canada de prouver qu'elle a le droit d'y entrer ou que son admission ne contreviendrait ni à la présente loi ni aux règlements.

(2) Toute personne désireuse d'entrer au Canada est présumée vouloir s'y établir tant qu'elle n'a pas démontré le contraire à la satisfaction de l'agent d'immigration qui l'examine ou de l'arbitre qui mène l'enquête.

Visas et autorisations spéciales

9. (1) Sous réserve des dispositions réglementaires, tout immigrant et tout visiteur doivent demander et obtenir un visa avant de se présenter à un point d'entrée.

(2) Toute personne qui fait une demande de visa doit être examinée par un agent des visas qui détermine si elle semble être une personne qui peut obtenir le droit d'établissement ou l'autorisation de séjour.

(3) Toute personne doit répondre sincèrement aux questions de l'agent des visas et produire toutes les pièces qu'il réclame pour établir que son admission ne contreviendrait ni à la présente loi ni aux règlements.

(4) L'agent des visas, qui constate que l'établissement ou le séjour au Canada d'une personne visée au paragraphe (1) ne contreviendrait ni à la présente loi ni aux règlements, peut lui délivrer un visa attestant qu'à son avis, le titulaire est un immigrant ou un visiteur qui satisfait aux exigences de la présente loi et des règlements.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Applications by students and workers

10. Except in such cases as are prescribed, every person who seeks entry for the purpose of

(*a*) attending any university or college authorized by statute or charter to confer degrees;

(*b*) taking any academic, professional or vocational training course at any university, college or other institution not described in paragraph (*a*), or

(*c*) engaging in employment

shall make an application to a visa officer for and obtain authorization to enter Canada for such purpose before he appears at a port of entry.

Visas d'étudiant et d'emploi

10. Sous réserve des dispositions réglementaires, toute personne désireuse de séjourner au Canada aux fins

a) de suivre des cours à une université ou à un collège autorisés par la loi ou par une charte à délivrer des diplômes,

b) de suivre des cours de formation théorique ou professionnelle à une université, à un collège ou à toute autre institution, non visés à l'alinéa *a*), ou

c) de prendre un emploi,

doit faire une demande à un agent des visas et obtenir l'autorisation nécessaire avant de se présenter à un point d'entrée.

Examinations

Examens

Medical examination required

11. (1) Every immigrant and every visitor of a prescribed class shall undergo a medical examination by a medical officer.

Visite médicale obligatoire

11. (1) Doivent se soumettre à la visite d'un médecin, tout immigrant et tout visiteur faisant partie d'une catégorie pour laquelle ladite visite est prévue par les règlements.

Medical examination may be required

(2) Every visitor and every person in possession of a permit who, in the opinion of an immigration officer or an adjudicator, may be a member of the inadmissible class described in paragraph 19(1)(*a*) may be required by the immigration officer or the adjudicator to undergo a medical examination by a medical officer.

Visite médicale facultative

(2) Un agent d'immigration ou un arbitre peut exiger que tout visiteur et tout titulaire de permis qui, selon lui, fait partie de la catégorie de personnes non admissibles visée à l'alinéa 19(1)*a*) se soumettent à la visite d'un médecin.

Definition

(3) For the purposes of this section, medical examination includes a mental examination, a physical examination and a medical assessment of records respecting a person.

Définition

(3) Aux fins du présent article, la visite médicale comprend l'examen psychiatrique et physique ainsi que l'examen, sur le plan médical, du dossier d'une personne.

Examination by immigration officer

12. (1) Every person seeking to come into Canada shall appear before an immigration officer at a port of entry, or at such other place as may be designated by a senior immigration officer, for examination to determine whether he is a person who shall be allowed to come into Canada or may be granted admission.

Examen par un agent d'immigration

12. (1) Toute personne désireuse d'entrer au Canada, doit se présenter devant un agent d'immigration à un point d'entrée ou à tout autre endroit désigné par un agent d'immigration supérieur; après examen, l'agent d'immigration détermine si la personne doit être autorisée à entrer au Canada ou si elle peut obtenir l'admission.

Where physically outside Canada

(2) For the purposes of this section, where a person leaves Canada and thereafter seeks to return to Canada, whether or not he was granted lawful permission to be in any other country, he shall be deemed to be seeking to come into Canada.

Retour au Canada

(2) Pour l'application du présent article, toute personne désireuse de retourner au Canada, que son séjour en pays étranger ait été autorisé ou non, est réputée désireuse d'entrer au Canada.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Adjournment of examination

(3) Where an immigration officer commences an examination referred to in subsection (1), he may, in such circumstances as he deems proper,

(*a*) adjourn the examination and refer the person being examined to another immigration officer for completion of the examination; and

(*b*) detain or make an order to detain the person.

Ajournement de l'examen

(3) L'agent d'immigration, qui a commencé l'examen visé au paragraphe (1), peut, lorsqu'il le juge à propos,

a) ajourner l'examen et déférer la personne à un autre agent d'immigration pour qu'il termine l'examen en question; et

b) la détenir ou en ordonner la détention.

Duty to answer questions

(4) Every person shall answer truthfully all questions put to him by an immigration officer at an examination and shall produce such documentation as may be required by the immigration officer for the purpose of establishing whether he shall be allowed to come into Canada or may be granted admission.

Obligation de répondre aux questions

(4) Toute personne examinée doit répondre sincèrement aux questions de l'agent d'immigration et produire toutes les pièces qu'il réclame aux fins d'établir si elle doit être autorisée à entrer au Canada ou si elle peut obtenir l'admission.

Where person cannot be properly examined

13. (1) Where, in the opinion of an immigration officer, a person appearing before him for examination cannot for any reason be properly examined, the immigration officer may cause the examination of such person to be deferred until such time as he may be properly examined or may make an order for his rejection from Canada.

Impossibilité d'un examen convenable

13. (1) Au cas où l'agent d'immigration estime que, pour une raison quelconque, la personne qui se présente devant lui ne peut être examinée convenablement, il peut soit faire ajourner l'examen jusqu'à ce qu'il puisse être fait de façon convenable, soit prononcer, par ordonnance, le refoulement de la personne concernée.

Service of rejection order

(2) An order made under subsection (1) or a copy thereof shall be served upon the person against whom it is made and upon the owner or master of the vehicle by which such person was brought to Canada.

Signification de l'ordonnance de refoulement

(2) L'original ou une copie de toute ordonnance visée au paragraphe (1) est signifié à la personne en cause et au propriétaire ou responsable du véhicule qui l'a amenée au Canada.

Cessation of order

(3) An order made under subsection (1) shall cease to be in force or to have effect when the person against whom it was made again appears before an immigration officer and can, in the opinion of such officer, be properly examined by him.

Caducité de l'ordonnance

(3) L'ordonnance visée au paragraphe (1) cesse de produire ses effets au cas où la personne en cause se présente à nouveau devant un agent d'immigration qui peut, de son propre avis, l'examiner convenablement.

Where person shall be allowed to come into Canada

14. (1) Where an immigration officer is satisfied that a person examined by him

(*a*) has a right to come into Canada,

(*b*) is a person in possession of a subsisting permit, or

(*c*) is a person against whom a removal order has been made or to whom a departure notice has been issued who has been removed from or otherwise left Canada but has not been granted lawful permission to be in any other country,

Autorisation d'entrer au Canada

14. (1) L'agent d'immigration doit autoriser à entrer au Canada une personne qu'il a examinée lorsqu'il constate qu'elle

a) a le droit d'entrer au Canada;

b) est en possession d'un permis en cours de validité; ou

c) a quitté le Canada après avoir fait l'objet d'une ordonnance de renvoi ou d'un avis d'interdiction de séjour, mais n'a pas obtenu l'autorisation de séjourner dans un autre pays.

POOR COPY
COPIE DE QUALITEE INFERIEURE

he shall allow such person to come into Canada.

Where immigrant shall be granted landing

(2) Where an immigration officer is satisfied that it would not be contrary to this Act or the regulations to grant landing to an immigrant examined by him,

(*a*) he shall grant landing to that immigrant, in which case he may impose terms and conditions of a prescribed nature; or

(*b*) he may authorize that immigrant to come into Canada on condition that he present himself for further examination by an immigration officer within such time and at such place as the immigration officer who examined him may direct.

Where visitor may be granted entry

(3) Where an immigration officer is satisfied that it would not be contrary to this Act or the regulations to grant entry to a visitor examined by him, he may grant entry to that visitor and impose terms and conditions of a prescribed nature.

Further examination of immigrants

(4) Where an immigration officer is satisfied that it would not be contrary to this Act or the regulations to grant landing to an immigrant who has been authorized pursuant to paragraph 14(2)(*b*), 23(1)(*b*) or 32(3)(*b*) to come into Canada, he shall, after such further examination as he deems necessary, grant landing to such person, in which case he may impose terms and conditions of a prescribed nature.

Deemed cancellation of terms and conditions

15. (1) When a permanent resident who has been granted landing subject to terms and conditions has complied with those terms and conditions, they shall be deemed to have been cancelled six months after the day on which that permanent resident was granted landing.

Application by permanent resident to vary terms and conditions

(2) Where a permanent resident has been granted landing subject to terms and conditions, he may at any time make an application to an immigration officer to vary or cancel any such terms and conditions.

Application by visitor in Canada

16. (1) Subject to subsection (2), any visitor may make an application to an immigration officer

Octroi du droit d'établissement

(2) L'agent d'immigration qui constate qu'accorder le droit d'établissement à un immigrant qu'il a examiné ne contreviendrait ni à la présente loi ni aux règlements

a) doit lui accorder le droit d'établissement et peut alors lui imposer des conditions prévues aux règlements; ou

b) peut l'autoriser à entrer au Canada à condition qu'il se présente, pour examen complémentaire, devant un agent d'immigration dans le délai et au lieu qu'il peut ordonner.

Octroi de l'autorisation de séjour

(3) L'agent d'immigration qui constate qu'accorder l'autorisation de séjour à un visiteur qu'il a examiné ne contreviendrait ni à la présente loi ni aux règlements, peut la lui accorder et lui imposer des conditions prévues aux règlements.

Examen complémentaire des immigrants

(4) L'agent d'immigration qui constate que l'établissement au Canada d'un immigrant autorisé à y entrer en vertu des alinéas 14(2)*b*), 23(1)*b*) ou 32(3)*b*), ne contreviendrait ni à la présente loi ni aux règlements, doit, après tout examen complémentaire qu'il juge nécessaire, lui accorder le droit d'établissement et peut alors lui imposer des conditions prévues aux règlements.

Caducité des conditions

15. (1) Les conditions auxquelles est soumis le droit d'établissement sont réputées caduques dans un délai de six mois après que le résident permanent ait obtenu son droit d'établissement, pourvu qu'il les ait respectées.

Demande de modification des conditions

(2) Un résident permanent peut, à tout moment, demander à un agent d'immigration de modifier ou d'annuler les conditions auxquelles est soumis son droit d'établissement.

Demande d'un visiteur se trouvant au Canada

16. (1) Sous réserve du paragraphe (2), tout visiteur peut demander à un agent d'immigration

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*a*) to vary or cancel terms and conditions imposed pursuant to subsection 14(3), 23(2) or 32(4); or

(*b*) to extend the period of time during which he is authorized to remain in Canada, except where he was granted entry pursuant to subsection 19(3).

a) la modification ou l'annulation des conditions imposées en vertu des paragraphes 14(3), 23(2) ou 32(4); ou

b) la prolongation de la durée autorisée de son séjour au Canada, sauf s'il a obtenu l'autorisation de séjour en vertu du paragraphe 19(3).

No application in certain circumstances

(2) Except in such cases as are prescribed, no visitor in Canada may make an application to an immigration officer to obtain authorization

(*a*) to attend any university or college or take any academic, professional or vocational training course; or

(*b*) to engage in employment in Canada.

Demandes interdites en certains cas

(2) Sous réserve des dispositions réglementaires, il est interdit à un visiteur séjournant au Canada de demander à un agent d'immigration l'autorisation

a) de suivre des cours d'université ou de collège ou tout autre cours de formation théorique ou professionnelle; ou

b) d'occuper un emploi au Canada.

Power of immigration officer

17. (1) Where an immigration officer receives an application made pursuant to subsection 15(2) or 16(1), he shall approve or refuse the application.

Pouvoir de l'agent d'immigration

17. (1) L'agent d'immigration, saisi d'une demande visée aux paragraphes 15(2) ou 16(1), doit l'accepter ou la rejeter.

When application approved

(2) When an application is approved under subsection (1), the immigration officer may

(*a*) vary or cancel any terms and conditions subject to which the person was granted landing or entry;

(*b*) add new terms and conditions of a prescribed nature; or

(*c*) in the case of a visitor, extend the period of time during which the visitor is authorized to remain in Canada.

Acceptation de la demande

(2) En cas d'acceptation en vertu du paragraphe (1), l'agent d'immigration peut

a) modifier ou annuler les conditions dont était assorti le droit d'établissement ou l'autorisation de séjour;

b) ajouter de nouvelles conditions réglementaires; ou

c) prolonger la durée autorisée du séjour au Canada d'un visiteur.

When application refused

(3) When an application made pursuant to subsection 16(1) is refused, the person who made the application shall be allowed to remain in Canada if the period of time during which he is authorized to remain in Canada has not expired unless a deportation order is made against that person.

Rejet de la demande

(3) Toute personne, dont la demande visée au paragraphe 16(1) a été rejetée, est autorisée à demeurer au Canada tant que n'est pas expirée la durée de son séjour, à moins qu'elle ne fasse l'objet d'une ordonnance d'expulsion.

Visitors' Security Deposits

Dépôt de gage par les visiteurs

Security that visitors will comply

18. (1) A senior immigration officer may require any visitor or group or organization of visitors arriving in Canada to deposit or arrange for the deposit with the Deputy Minister of such reasonable sum of money or other security as he deems necessary as a guarantee that such visitor or group or organization of visitors will comply with any terms and conditions that may be imposed under this Act.

Gage exigé des visiteurs

18. (1) Un agent d'immigration supérieur peut exiger qu'un visiteur, un groupe ou une organisation de visiteurs arrivant au Canada déposent ou fassent le nécessaire pour déposer, entre les mains du sous-ministre, un montant raisonnable d'argent ou tout autre gage qu'il estime approprié pour garantir le respect des conditions qui peuvent leur être imposées en vertu de la présente loi.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Where failure to comply

(2) Where a visitor or group or organization of visitors with respect to whom a sum of money or other security has been deposited pursuant to subsection (1) fails to comply with any term or condition that was imposed, the Deputy Minister may order that the sum of money so deposited be forfeited or that proceedings be taken to realize on the other security so deposited.

Non-respect des conditions

(2) En cas de non-respect des conditions imposées, le sous-ministre peut ordonner la confiscation de la somme ou la réalisation du gage déposé par les visiteurs en vertu du paragraphe (1).

Where security to be returned

(3) Where a visitor or group or organization of visitors with respect to whom a sum of money or other security has been deposited pursuant to subsection (1) complies with the terms and conditions that were imposed, the sum of money or other security so deposited shall be returned as soon as practicable.

Restitution des dépôts

(3) Les dépôts visés au paragraphe (1) doivent être restitués, aussitôt que possible, aux visiteurs qui ont respecté les conditions imposées.

PART III

EXCLUSION AND REMOVAL

Inadmissible Classes

PARTIE III

EXCLUSION ET RENVOI

Catégories de personnes non admissibles

Inadmissible persons

19. (1) No person shall be granted admission if he is a member of any of the following classes:

(*a*) persons who are suffering from any disease, disorder, disability or other health impairment as a result of the nature, severity or probable duration of which, in the opinion of a medical officer concurred in by at least one other medical officer,

(i) they are or are likely to be a danger to public health or to public safety, or

(ii) their admission would cause or might reasonably be expected to cause excessive demands on health or social services;

(*b*) persons who there are reasonable grounds to believe are or will be unable or unwilling to support themselves and those persons who are dependent on them for care and support, except persons who have satisfied an immigration officer that adequate arrangements have been made for their care and support;

(*c*) persons who have been convicted of an offence that, if committed in Canada, constitutes or, if committed outside Canada,

Personnes non admissibles

19. (1) Ne sont pas admissibles

a) les personnes souffrant d'une maladie, d'un trouble, d'une invalidité ou autre incapacité pour raison de santé, dont la nature, la gravité ou la durée probable sont telles qu'un médecin, dont l'avis est confirmé par au moins un autre médecin, conclut,

(i) qu'elles constituent ou pourraient constituer un danger pour la santé ou la sécurité publiques, ou

(ii) que leur admission entraînerait ou pourrait vraisemblablement entraîner un fardeau excessif pour les services sociaux ou de santé;

b) les personnes au sujet desquelles il existe de bonnes raisons de croire qu'elles ne peuvent, ne veulent, ne pourront ou ne voudront subvenir ni à leurs besoins ni à ceux des personnes à leur charge, à l'exception de celles qui ont établi à la satisfaction d'un agent d'immigration que des mesures adéquates ont été prises pour assurer leur soutien;

c) les personnes qui ont été déclarées coupables d'une infraction qui constitue, qu'elle ait été commise au Canada ou à

POOR COPY
COPIE DE QUALITEE INFERIEURE

would constitute an offence that may be punishable under any Act of Parliament and for which a maximum term of imprisonment of ten years or more may be imposed, except persons who have satisfied the Governor in Council that they have rehabilitated themselves and that at least five years have elapsed since the termination of the sentence imposed for the offence;

(*d*) persons who there are reasonable grounds to believe will

(i) commit one or more offences punishable by way of indictment under any Act of Parliament, or

(ii) engage in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence that may be punishable under any Act of Parliament by way of indictment;

(*e*) persons who have engaged in or who there are reasonable grounds to believe will engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada, except persons who, having engaged in such acts, have satisfied the Minister that their admission would not be detrimental to the national interest;

(*f*) persons who there are reasonable grounds to believe will, while in Canada, engage in or instigate the subversion by force of any government;

(*g*) persons who there are reasonable grounds to believe will engage in acts of violence that would or might endanger the lives or safety of persons in Canada or are members of or are likely to participate in the unlawful activities of an organization that is likely to engage in such acts of violence;

(*h*) persons who are not, in the opinion of an adjudicator, genuine immigrants or visitors; or

(*i*) persons who, pursuant to section 57, are required to obtain the consent of the Minister to come into Canada but are seeking to come into Canada without having obtained such consent.

l'étranger, une infraction qui peut être punissable, en vertu d'une loi du Parlement, d'une peine maximale d'au moins dix ans d'emprisonnement, à l'exception de celles qui établissent à la satisfaction du gouverneur en conseil qu'elles se sont réhabilitées et que cinq ans au moins se sont écoulés depuis l'expiration de leur peine;

d) les personnes au sujet desquelles il existe de bonnes raisons de croire qu'elles

(i) commettront une ou plusieurs infractions punissables par voie de mise en accusation en vertu d'une loi du Parlement, ou

(ii) se livreront à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert pour commettre une infraction qui peut être punissable par voie de mise en accusation en vertu d'une loi du Parlement;

e) les personnes qui se sont livrées à des actes d'espionnage ou de subversion contre des institutions démocratiques au sens où cette expression s'entend au Canada, ou au sujet desquelles il y a de bonnes raisons de croire qu'elles se livreront à de tels actes, à l'exception de celles qui, s'y étant livrées, ont établi à la satisfaction du Ministre que leur admission ne serait nullement préjudiciable à l'intérêt national;

f) les personnes au sujet desquelles il existe de bonnes raisons de croire que, pendant leur séjour au Canada, elles travailleront ou inciteront au renversement d'un gouvernement par la force;

g) les personnes au sujet desquelles il existe de bonnes raisons de croire qu'elles commettront des actes de violence de nature à porter atteinte à la vie ou à la sécurité humaines au Canada, ou qu'elles appartiennent à une association susceptible de commettre de tels actes ou qu'elles sont susceptibles de prendre part aux activités illégales d'une telle association;

h) les personnes qui, de l'avis d'un arbitre, ne sont pas de véritables immigrants ou visiteurs; ou

i) les personnes désireuses d'entrer au Canada sans avoir obtenu l'autorisation que leur impose l'article 57.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Inadmissible classes where entry permitted

(2) No immigrant and, except as provided in subsection (3), no visitor shall be granted admission if he is a member of any of the following classes:

(*a*) persons who have been convicted of an offence that, if committed in Canada, constitutes or, if committed outside Canada, would constitute an offence that may be punishable by way of indictment under any other Act of Parliament and for which a maximum term of imprisonment of less than ten years may be imposed, except persons who have satisfied the Minister that they have rehabilitated themselves and that

(i) in the case of persons who were convicted of any such offence when they were twenty-one or more years of age, at least five years have elapsed since the termination of the sentence imposed for the offence, or

(ii) in the case of persons who were convicted of any such offence when they were less than twenty-one years of age, at least two years have elapsed since the termination of the sentence imposed for the offence;

(*b*) persons who have been convicted of two or more offences not arising out of a single occurrence that, if committed in Canada, constitute or, if committed outside Canada, would constitute offences punishable on summary conviction under any other Act of Parliament, where

(i) in the case of persons who were convicted of any such offence when they were twenty-one or more years of age, any part of any sentences imposed in respect of two such offences was served or to be served at any time during the five year period immediately preceding the day on which they seek admission to Canada, or

(ii) in the case of persons who were convicted of such offences when they were less than twenty-one years of age, any part of any sentences imposed in respect thereof was served or to be served at any time during the two year period immediately preceding the day on which they seek admission to Canada;

(*c*) other members of a family accompanying a member of that family who may not be granted admission; or

Autorisation de séjour à des personnes non admissibles

(2) Ne peuvent obtenir l'admission, les immigrants et, sous réserve du paragraphe (3), les visiteurs qui

a) ont été déclarés coupables d'une infraction qui constitue, qu'elle ait été commise au Canada ou à l'étranger, une infraction qui peut être punissable par voie d'acte d'accusation, en vertu d'une autre loi du Parlement, d'une peine maximale de moins de dix ans d'emprisonnement, à l'exception de ceux qui établissent à la satisfaction du Ministre qu'ils se sont réhabilités et

(i) qu'au moins cinq ans se sont écoulés depuis la date de l'expiration de leur peine, au cas où l'auteur était âgé d'au moins vingt et un ans lors de la déclaration de culpabilité, ou

(ii) qu'au moins deux ans se sont écoulés depuis la date de l'expiration de leur peine, au cas où l'auteur était âgé de moins de vingt et un ans lors de la déclaration de culpabilité;

b) ont été déclarés coupables d'avoir commis au moins deux infractions qui ne découlent pas d'un même événement et qui constituent, qu'elles aient été commises au Canada ou à l'étranger, des infractions punissables sur déclaration sommaire de culpabilité en vertu d'une autre loi du Parlement, pour autant que

(i) ces infractions ont fait l'objet de peines qui ont été purgées ou devaient l'être au moins partiellement dans les cinq ans précédant la date de leur demande d'admission au Canada, dans les cas où l'auteur était âgé d'au moins vingt et un ans lors de la déclaration de culpabilité relative à l'une de ces infractions, ou

(ii) ces infractions ont fait l'objet de peines qui ont été purgées ou devaient l'être au moins partiellement dans les deux ans précédant la date de leur demande d'admission au Canada, dans les cas où l'auteur était âgé de moins de vingt et un ans lors des déclarations de culpabilité relative à ces infractions;

c) accompagnent un membre de leur famille qui peut se voir refuser l'admission; ou

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*d*) persons who cannot or do not fulfil or comply with any of the conditions or requirements of this Act or the regulations or any orders or directions lawfully made or given under this Act or the regulations.

d) ne remplissent pas les conditions prévues à la présente loi ou aux règlements ainsi qu'aux instructions et directives établis sous leur empire.

Discretionary grant of entry

(3) A senior immigration officer or an adjudicator, as the case may be, may grant entry to any person who is a member of an inadmissible class described in subsection (2) subject to such terms and conditions as he deems appropriate and for a period not exceeding thirty days, where, in his opinion, the purpose for which entry is sought justifies admission.

Pouvoir discrétionnaire d'accorder l'autorisation de séjour

(3) Un agent d'immigration supérieur ou un arbitre peut, lorsque les motifs de la demande lui semblent justifier une admission, accorder une autorisation de séjour à toute personne non admissible visée au paragraphe (2), sous réserve des conditions qu'il juge appropriées et pour une durée maximale de trente jours.

Removal at Ports of Entry

Renvoi aux points d'entrée

Reports at port of entry

20. (1) Where an immigration officer is of the opinion that it would or may be contrary to this Act or the regulations to grant admission to or otherwise let a person examined by him come into Canada, he may detain or make an order to detain the person and shall

(*a*) subject to subsection (2), in writing report that person to a senior immigration officer; or

(*b*) allow that person to leave Canada forthwith.

Rapports au point d'entrée

20. (1) L'agent d'immigration qui, après examen d'une personne, estime que lui accorder l'admission ou la permission d'entrer au Canada irait ou pourrait aller à l'encontre de la présente loi ou des règlements, peut mettre ou, par ordonnance, faire mettre ladite personne en détention et doit

a) sous réserve du paragraphe (2), signaler dans un rapport écrit, cette personne à un agent d'immigration supérieur; ou

b) autoriser ladite personne à quitter le Canada immédiatement.

Temporary exclusion by immigration officer

(2) Where an immigration officer at a port of entry is of the opinion that it would or may be contrary to this Act or the regulations to grant admission to or otherwise let come into Canada a person who is residing or sojourning in the United States, he may, where a senior immigration officer to whom he would otherwise make a report pursuant to subsection (1) is not reasonably available, direct that person to return to the United States until such time as such senior immigration officer is available.

Exclusion temporaire par un agent d'immigration

(2) Lorsque, à un point d'entrée, un agent d'immigration estime qu'accorder l'admission ou la permission d'entrer au Canada à une personne résidant ou séjournant aux États-Unis irait ou pourrait aller à l'encontre de la présente loi ou des règlements, il peut, si l'agent d'immigration supérieur auquel il doit faire le rapport visé au paragraphe (1) n'est pas raisonnablement disponible et en attendant qu'il soit disponible, ordonner à ladite personne de retourner aux États-Unis.

Grounds for removal order

21. Where a removal order is made against any person with respect to whom an inquiry is held as a result of a report made pursuant to subsection 20(1), the removal order against that person may be made on the basis that that person is a member of any inadmissible class.

Motif de l'ordonnance de renvoi

21. L'ordonnance de renvoi frappant une personne qui a fait l'objet d'une enquête à la suite du rapport visé au paragraphe 20(1), peut être motivée par le fait que ladite personne appartient à une catégorie non admissible.

Where person shall be allowed to come into Canada

22. Where a senior immigration officer receives a report made pursuant to subsection 20(1) concerning a person who seeks to

Autorisation d'entrer au Canada

22. L'agent d'immigration supérieur saisi du rapport prévu au paragraphe 20(1), concernant une personne désireuse d'entrer au

POOR COPY
COPIE DE QUALITEE INFERIEURE

come into Canada, he shall let the person come into Canada where he is satisfied that the person is a person described in subsection 14(1).

Canada et qu'il estime être visée au paragraphe 14(1), doit la laisser entrer au Canada.

Where immigrant shall be granted landing

23. (1) Where a senior immigration officer receives a report made pursuant to subsection 20(1) concerning an immigrant,

(*a*) he shall grant landing to that immigrant, in which case he may impose terms and conditions of a prescribed nature, or

(*b*) he may authorize that immigrant to come into Canada on condition that he present himself for further examination by an immigration officer within such time and at such place as the senior immigration officer may direct,

if he is satisfied that it would not be contrary to this Act or the regulations to grant landing to or otherwise authorize that immigrant to come into Canada.

Octroi du droit d'établissement

23. (1) L'agent d'immigration supérieur qui est saisi du rapport prévu au paragraphe 20(1) concernant un immigrant et qui estime qu'accorder le droit d'établissement à cet immigrant ou l'autoriser par ailleurs à entrer au Canada ne contreviendrait ni à la présente loi ni aux règlements

a) doit lui accorder le droit d'établissement et peut alors lui imposer des conditions prévues aux règlements, ou

b) peut l'autoriser à entrer au Canada à condition de se présenter, dans le délai et au lieu qu'il fixe, devant un agent d'immigration pour examen complémentaire.

Where visitor may be granted entry

(2) Where a senior immigration officer receives a report made pursuant to subsection 20(1) concerning a visitor, he may grant entry to that visitor and, except in the case of a person who may be granted entry pursuant to subsection 19(3), impose terms and conditions of a prescribed nature if he is satisfied that it would not be contrary to this Act or the regulations to grant entry to that visitor.

Octroi de l'autorisation de séjour

(2) L'agent d'immigration supérieur qui est saisi du rapport prévu au paragraphe 20(1) concernant un visiteur et qui estime qu'accorder l'autorisation de séjour à ce visiteur ne contreviendrait ni à la présente loi ni aux règlements, peut la lui accorder et, sauf s'il s'agit d'une personne qui peut obtenir l'autorisation de séjour en vertu du paragraphe 19(3), lui imposer des conditions prévues aux règlements.

Where inquiry required

(3) Where a senior immigration officer does not let a person come into Canada pursuant to section 22 and does not grant admission to or otherwise authorize the person to come into Canada pursuant to subsection (1) or (2), he may

(*a*) detain or make an order to detain the person, or

(*b*) release the person from detention subject to such terms and conditions as he deems appropriate in the circumstances, including the payment of a reasonable security deposit or the posting of a performance bond,

and shall

(*c*) subject to subsection (4), cause an inquiry to be held concerning that person as soon as is reasonably practicable, or

Nécessité d'une enquête

(3) L'agent d'immigration supérieur qui n'accorde pas à une personne la permission d'entrer au Canada en vertu de l'article 22 ni ne lui accorde l'admission ou l'autorisation d'entrer au Canada en vertu du paragraphe (1) ou (2), peut

a) la détenir ou donner l'ordre de la détenir, ou

b) la mettre en liberté sous réserve des conditions qu'il juge appropriées aux circonstances, notamment du dépôt d'un gage raisonnable ou d'un bon de garantie d'exécution

et doit

c) sous réserve du paragraphe (4), faire tenir, dès que les circonstances le permettent, une enquête sur ladite personne, ou

d) l'autoriser à quitter le Canada immédiatement.

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*d*) allow that person to leave Canada forthwith.

Temporary exclusion by senior immigration officer

(4) Where, pursuant to subsection (3), a senior immigration officer is required to cause an inquiry to be held with respect to a person who is residing or sojourning in the United States, he may, where an adjudicator is not reasonably available to preside at the inquiry, direct that person to return to the United States until such time as an adjudicator is available.

Exclusion temporaire par l'agent d'immigration supérieur

(4) L'agent d'immigration supérieur qui, conformément au paragraphe (3), doit faire tenir une enquête sur une personne qui réside ou séjourne aux États-Unis, peut, si aucun arbitre n'est raisonnablement disponible pour mener l'enquête et en attendant qu'il soit possible d'en trouver un disponible, ordonner à ladite personne de retourner aux États-Unis.

Where person not to be detained, etc.

(5) No person shall be detained or ordered detained by a senior immigration officer pursuant to paragraph (3)(*a*) and any person who has been detained pursuant to subsection 20(1) shall be released from detention by a senior immigration officer pursuant to paragraph (3)(*b*) unless the senior immigration officer is satisfied that the person poses a danger to the public or would not appear for an examination or inquiry.

Détention non autorisée

(5) L'agent d'immigration supérieur ne peut détenir ou donner l'ordre de détenir une personne conformément à l'alinéa (3)*a*) et doit mettre en liberté, conformément à l'alinéa (3)*b*), toute personne qui a été détenue en vertu du paragraphe 20(1) à moins qu'il ne soit convaincu que cette personne constitue une menace pour le public ou se dérobera à un examen ou à une enquête.

Copy of report to be made available

(6) Where a senior immigration officer causes an inquiry to be held concerning a person with respect to whom a report has been made pursuant to subsection 20(1), he shall make a copy of the report available to that person.

Copie du rapport disponible

(6) L'agent d'immigration supérieur qui fait tenir une enquête sur une personne visée par un rapport prévu au paragraphe 20(1), doit mettre une copie de ce rapport à la disposition de cette personne.

Loss of Status

Perte de statut

Where person ceases to be permanent resident

24. (1) A person ceases to be a permanent resident when

(*a*) he leaves or remains outside Canada with the intention of abandoning Canada as his place of permanent residence; or

(*b*) a deportation order has been made against him and such order is not quashed or the execution thereof is not stayed pursuant to subsection 75(1).

Perte du statut de résident permanent

24. (1) Sont déchues de leur statut de résident permanent les personnes

a) qui quittent le Canada ou demeurent à l'étranger avec l'intention de renoncer à considérer le Canada comme lieu de leur résidence permanente; ou

b) qui ont fait l'objet d'une ordonnance d'expulsion non infirmée ou dont le sursis d'exécution n'a pas été accordé en vertu du paragraphe 75(1).

Where residence deemed abandoned

(2) Where a permanent resident is outside Canada for more than one hundred and eighty-three days in any one twelve month period, he shall be deemed to have abandoned Canada as his place of permanent residence unless he satisfies an immigration officer or an adjudicator, as the case may be, that he did not intend to abandon Canada as his place of permanent residence.

Renonciation à la résidence

(2) Le résident permanent qui se trouve à l'étranger plus de cent quatre-vingt-trois jours au cours d'une période de douze mois est réputé avoir renoncé à considérer le Canada comme son lieu de résidence permanente, sauf s'il établit le contraire à la satisfaction d'un agent d'immigration ou d'un arbitre, selon le cas.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Applications for returning resident permits

25. (1) Where a permanent resident intends to leave Canada for any period of time or is outside Canada, he may in prescribed manner make an application to an immigration officer for a returning resident permit.

Demande de permis de retour pour résident permanent

25. (1) Le résident permanent désireux de quitter le Canada temporairement ou qui se trouve à l'étranger, peut demander à un agent d'immigration, dans la forme prescrite, un permis de retour.

Proof of intention

(2) Possession by a person of a valid returning resident permit issued to him pursuant to the regulations is, in the absence of evidence to the contrary, proof that the person did not leave or remain outside Canada with the intention of abandoning Canada as his place of permanent residence.

Preuve d'intention

(2) Le fait pour une personne de posséder et d'être titulaire d'un permis valide de retour pour résident, délivré de la manière prescrite, établit, jusqu'à preuve du contraire, que son séjour à l'étranger ne constituait pas une renonciation à considérer le Canada comme son lieu de résidence permanente.

Where person ceases to be visitor

26. (1) A person ceases to be a visitor in Canada when

(*a*) he fails to comply with any term or condition subject to which he is authorized to remain in Canada;

(*b*) without authorization, he attends any university or college, takes any academic, professional or vocational training course or engages in employment in Canada;

(*c*) he remains in Canada for a period of time greater than that for which he is authorized to remain in Canada;

(*d*) a departure notice has been issued to him and the date on or before which he was thereby required to leave Canada has passed; or

(*e*) a deportation order has been made against him that is not quashed or the execution of which is not stayed pursuant to subsection 75(1).

Perte de la qualité de visiteur

26. (1) Sont déchues de leur qualité de visiteur les personnes

a) qui ne respectent pas les conditions auxquelles elles ont été autorisées à séjourner au Canada;

b) qui, sans autorisation, suivent des cours d'université ou de collège ou tout autre cours de formation théorique ou professionnelle ou encore occupent un emploi au Canada;

c) dont le séjour au Canada dépasse la durée autorisée;

d) qui, ayant fait l'objet d'un avis d'interdiction de séjour, n'ont pas quitté le Canada à l'expiration du délai imparti; ou

e) qui ont fait l'objet d'une ordonnance d'expulsion non infirmée ou dont le sursis d'exécution n'a pas été accordé en vertu du paragraphe 75(1).

Idem

(2) Unless otherwise specified in writing by an immigration officer or an adjudicator, a visitor is not authorized to remain in Canada for a period in excess of three months from the day on which he is granted entry.

Idem

(2) La durée de l'autorisation de séjour d'un visiteur ne peut dépasser trois mois à compter de sa date, sauf indication contraire et écrite de la part d'un agent d'immigration ou d'un arbitre.

Removal After Admission

Renvoi après admission

Reports on permanent residents

27. (1) Where an immigration officer or peace officer has in his possession information indicating that a permanent resident is a person who

(*a*) if he were an immigrant, would not be granted landing by reason of his being a member of an inadmissible class described

Rapports sur les résidents permanents

27. (1) Tout agent d'immigration ou agent de la paix, en possession de renseignements indiquant qu'un résident permanent

a) ne remplit pas les conditions d'obtention du droit d'établissement du fait de son appartenance à l'une des catégories non admissibles visées aux alinéas 19(1)*c*), *d*),

POOR COPY
COPIE DE QUALITEE INFERIEURE

in paragraph 19(1)(*c*), (*d*), (*e*) or (*g*) or in paragraph 19(2)(*a*) due to his having been convicted of an offence before he was granted landing,

(*b*) if he was granted landing subject to terms and conditions, has knowingly contravened any such term or condition,

(*c*) is engaged in or instigating subversion by force of any government,

(*d*) has been convicted of an offence under any Act of Parliament for which a term of imprisonment of

(i) more than six months has been imposed, or

(ii) five years or more may be imposed,

(*e*) was granted landing by reason of possession of a false or improperly obtained passport, visa or other document pertaining to his admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or by any other person, or

(*f*) wilfully fails to support himself or any dependent member of his family in Canada,

he shall forward a written report to the Deputy Minister setting out the details of such information.

e) ou *g*) ou à l'alinéa 19(2)*a*) par suite d'une déclaration de culpabilité faite à son égard avant l'obtention du droit d'établissement,

b) a sciemment contrevenu aux conditions auxquelles était soumis son droit d'établissement,

c) travaille ou incite au renversement d'un gouvernement par la force,

d) déclaré coupable d'une infraction prévue par une loi du Parlement

(i) a été condamné à plus de six mois de prison, ou

(ii) est passible d'au moins cinq ans de prison,

e) a obtenu le droit d'établissement soit sur présentation d'un passeport, visa ou autre document relatif à son admission faux ou obtenu irrégulièrement, soit par des moyens frauduleux ou irréguliers soit grâce à une représentation erronée d'un fait important, que ces moyens aient été exercés ou ces représentations faites par ledit résident ou par un tiers, ou

f) néglige délibérément de subvenir à ses besoins ou à ceux d'une personne à charge, membre de sa famille au Canada,

doit adresser un rapport écrit et circonstancié au sous-ministre à ce sujet.

Reports on visitors and other persons

(2) Where an immigration officer or peace officer has in his possession information indicating that a person in Canada, other than a Canadian citizen or a permanent resident, is a person who

(*a*) if he were applying for entry, would not or might not be granted entry by reason of his being a member of an inadmissible class other than an inadmissible class described in paragraph 19(1)(*h*) or 19(2)(*c*),

(*b*) has engaged or continued in employment in Canada contrary to this Act or the regulations,

(*c*) is engaged in or instigating subversion by force of any government,

(*d*) has been convicted of an offence under the *Criminal Code* or of an offence that may be punishable by way of indictment under any Act of Parliament other than the *Criminal Code* or this Act,

Rapports sur les visiteurs et autres personnes

(2) Tout agent d'immigration ou agent de la paix, en possession de renseignements indiquant qu'une personne se trouvant au Canada, autre qu'un citoyen canadien ou un résident permanent,

a) pourrait se voir refuser l'autorisation de séjour du fait qu'elle fait partie d'une catégorie non admissible, autre que celles visées aux alinéas 19(1)*h*) ou 19(2)*c*),

b) a pris ou conservé un emploi au Canada en violation de la présente loi ou des règlements,

c) travaille ou incite au renversement d'un gouvernement par la force,

d) a été déclarée coupable d'une infraction en vertu du *Code criminel* ou d'une infraction qui peut être punissable par voie de mise en accusation en vertu d'une loi du Parlement autre que le *Code criminel* ou la présente loi,

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*e*) entered Canada as a visitor and remains therein after he has ceased to be a visitor,

(*f*) came into Canada at any place other than a port of entry and failed to report forthwith to an immigration officer or eluded examination or inquiry under this Act or escaped from lawful custody or detention under this Act,

(*g*) came into Canada or remains therein with a false or improperly obtained passport, visa or other document pertaining to his admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or by any other person,

(*h*) came into Canada contrary to section 57,

(*i*) has not left Canada on or before the date specified in a departure notice that was issued to him or, having so left Canada, has been allowed to come into Canada pursuant to paragraph 14(1)(*c*),

(*j*) came into Canada as or to become a member of a crew and, without the approval of an immigration officer, failed to be on the vehicle when it left a port of entry,

(*k*) was authorized pursuant to paragraph 14(2)(*b*), 23(1)(*b*) or 32(3)(*b*) to come into Canada and failed to present himself for further examination within such time and at such place as was directed, or

(*l*) wilfully fails to support any dependent member of his family in Canada,

he shall forward a written report to the Deputy Minister setting out the details of such information unless that person has been arrested without warrant and held in detention pursuant to section 104.

e) est entrée au Canada en qualité de visiteur et y demeure après avoir perdu cette qualité,

f) est entrée au Canada à un endroit autre qu'un point d'entrée et ne s'est pas immédiatement présentée à un agent d'immigration ou s'est dérobée à un examen ou à une enquête prévus par la présente loi ou encore s'est évadée alors qu'elle était légalement détenue ou sous garde en vertu de la présente loi,

g) est entrée au Canada ou y demeure soit sous le couvert d'un passeport, visa ou autre document relatif à son admission faux ou obtenu irrégulièrement, soit par des moyens frauduleux ou irréguliers soit grâce à une représentation erronée d'un fait important, que ces moyens aient été exercés ou ces représentations faites par ladite personne ou par un tiers,

h) est entrée au Canada en violation de l'article 57,

i) n'a pas quitté le Canada dans le délai imparti par l'avis d'interdiction de séjour qui lui a été adressé ou, après avoir ainsi quitté le Canada, a obtenu l'autorisation d'y entrer en vertu de l'alinéa 14(1)*c*),

j) est entrée au Canada à titre de membre de l'équipage d'un véhicule ou pour le devenir et a, sans l'autorisation d'un agent d'immigration, négligé de regagner le véhicule lors de son départ d'un point d'entrée,

k) a été autorisée à entrer au Canada en vertu des alinéas 14(2)*b*), 23(1)*b*) ou 32(3)*b*) et a négligé de se présenter à l'examen complémentaire dans le délai et au lieu indiqués, ou

l) néglige délibérément de subvenir aux besoins d'une personne à charge, membre de sa famille au Canada,

doit adresser à ce sujet un rapport écrit et circonstancié au sous-ministre, à moins que la personne concernée n'ait été arrêtée sans mandat et détenue en vertu de l'article 104.

Referral of report for inquiry

(3) Subject to any order or direction of the Minister, the Deputy Minister shall, on receiving a report pursuant to subsection (1) or (2), and where he considers that an inquiry is warranted, forward a copy of that report and a direction that an inquiry be held to a senior immigration officer.

Transmission du rapport aux fins d'enquête

(3) Sous réserve des instructions ou directives du Ministre, le sous-ministre saisi d'un rapport visé aux paragraphes (1) ou (2), doit, au cas où il estime que la tenue d'une enquête s'impose, adresser à un agent d'immigration supérieur une copie de ce rapport

POOR COPY
COPIE DE QUALITEE INFERIEURE

et une directive prévoyant la tenue d'une enquête.

Inquiry required

(4) Where a senior immigration officer receives a copy of a report and a direction pursuant to subsection (3), he shall, as soon as reasonably practicable, cause an inquiry to be held concerning the person with respect to whom the report was made.

Nécessité d'une enquête

(4) L'agent d'immigration supérieur qui reçoit le rapport et la directive visés au paragraphe (3), doit, dès que les circonstances le permettent, faire tenir une enquête sur la personne en question.

Inquiry where detention

28. Where a person is held in detention pursuant to paragraph 23(3)(*a*) or section 104 for an inquiry, a senior immigration officer shall forthwith cause the inquiry to be held concerning that person.

Enquête sur une personne détenue

28. Un agent d'immigration supérieur doit immédiatement faire tenir une enquête au sujet de toute personne détenue, en vertu de l'alinéa 23(3)*a*) ou de l'article 104, pour fins d'enquête.

Conduct of Inquiries

Tenue des enquêtes

Nature of inquiry

29. (1) An inquiry by an adjudicator shall be held in the presence of the person with respect to whom the inquiry is to be held wherever practicable.

Nature de l'enquête

29. (1) Toute enquête par un arbitre a lieu, dans la mesure du possible, en présence de la personne qui en fait l'objet.

Observer allowed

(2) At the request or with the permission of the person with respect to whom an inquiry is to be held, an adjudicator shall allow any person to attend an inquiry if such attendance is not likely to impede the inquiry.

Présence d'observateurs

(2) A la demande ou avec l'autorisation de la personne faisant l'objet de l'enquête, l'arbitre doit permettre à des observateurs d'assister à l'enquête, dans la mesure où leur présence n'est pas susceptible d'en entraver le déroulement.

In camera hearing

(3) Except as provided in subsection (2), an inquiry by an adjudicator shall be held *in camera*.

Enquête à huis clos

(3) Sous réserve du paragraphe (2), l'arbitre mène l'enquête à huis clos.

Minors and incompetents

(4) Where an inquiry is held with respect to any person under the age of eighteen years or any person who, in the opinion of the adjudicator, is unable to appreciate the nature of the proceedings, such person may, subject to subsection (5), be represented by a parent or guardian.

Mineurs et incapables

(4) En cas d'enquête au sujet d'une personne âgée de moins de dix-huit ans ou d'une personne qui, de l'avis de l'arbitre, n'est pas en mesure de comprendre la nature de la procédure, cette personne peut, sous réserve du paragraphe (5), être représentée par son père, sa mère ou un tuteur.

Where representative designated by adjudicator

(5) Where at an inquiry a person described in subsection (4) is not represented by a parent or guardian or where, in the opinion of the adjudicator presiding at the inquiry, the person is not properly represented by a parent or guardian, the inquiry shall be adjourned and the adjudicator shall designate some other person to represent that person at the expense of the Minister.

Désignation d'un représentant par l'arbitre

(5) Au cas où une personne visée au paragraphe (4) n'est pas représentée par son père, sa mère ou un tuteur ou bien au cas où l'arbitre qui mène l'enquête estime que le père, la mère ou le tuteur ne représente pas convenablement la personne, l'enquête est ajournée et l'arbitre doit désigner à ladite personne une autre personne pour la représenter, aux frais du Ministre.

Right to counsel

30. (1) Every person with respect to whom an inquiry is to be held shall be informed that he has the right to obtain the services of a barrister or solicitor or other counsel and to

Le droit à un conseil

30. (1) Toute personne faisant l'objet d'une enquête doit être informée qu'elle a droit aux services d'un avocat, d'un procureur ou de tout autre conseil pour la repré-

POOR COPY
COPIE DE QUALITEE INFERIEURE

be represented by any such counsel at his inquiry and shall be given a reasonable opportunity, if he so desires and at his own expense, to obtain such counsel.

senter et il doit lui être donné la possibilité de choisir un conseil, à ses frais.

Evidence

(2) An adjudicator may at an inquiry receive and base his decision upon evidence adduced at the inquiry and considered credible or trustworthy by him in the circumstances of each case.

(2) L'arbitre peut recevoir les preuves qu'il considère dignes de foi eu égard aux circonstances de chaque espèce et fonder sa décision sur lesdites preuves soumises lors de l'enquête.

Preuve

Decision after inquiry

31. (1) An adjudicator shall give his decision as soon as possible after an inquiry has been completed and his decision shall be given in the presence of the person concerned wherever practicable.

31. (1) Après l'enquête, l'arbitre doit rendre sa décision le plus tôt possible, en présence de la personne concernée, si les circonstances le permettent.

Décision après enquête

Person to be informed of basis for removal order

(2) Where the decision of an adjudicator results in the making of a removal order against or the issuing of a departure notice to a person, the adjudicator shall inform the person of the basis upon which the order was made or the notice was issued.

(2) A la suite d'une enquête, l'arbitre qui prononce le renvoi ou émet un avis d'interdiction de séjour, doit en faire connaître les motifs à la personne visée.

Communication des motifs de l'ordonnance de renvoi

Where person shall be allowed to come into or remain in Canada

32. (1) Where an adjudicator decides that a person who is the subject of an inquiry is a person described in subsection 14(1) or a person who has a right to remain in Canada, he shall let such person come into Canada or remain therein, as the case may be.

32. (1) L'arbitre, après avoir conclu que la personne faisant l'objet d'une enquête est visée au paragraphe 14(1) ou a le droit de demeurer au Canada, doit la laisser entrer ou demeurer au Canada.

Personne devant être autorisée à entrer ou demeurer au Canada

Where person is a permanent resident

(2) Where an adjudicator decides that a person who is the subject of an inquiry is a permanent resident described in subsection 27(1), he shall, subject to subsections 45(1) and 47(3), make a deportation order against that person.

(2) L'arbitre, après avoir conclu que la personne faisant l'objet d'une enquête est un résident permanent visé au paragraphe 27(1), doit, sous réserve des paragraphes 45(1) et 47(3), en prononcer l'expulsion.

Résidents permanents

Admission where seeking admission

(3) Where an adjudicator decides that a person who is the subject of an inquiry is a person who, at the time of his examination, was seeking landing and that it would not be contrary to any provision of this Act or the regulations to grant landing to that person

(3) L'arbitre, après avoir conclu que la personne faisant l'objet d'une enquête avait sollicité le droit d'établissement au cours de son examen et qu'il ne serait contraire ni à la présente loi ni aux règlements de le lui accorder

Personnes demandant l'admission

(*a*) he shall grant landing to that person, in which case he may impose terms and conditions of a prescribed nature; or

(*b*) he may authorize that immigrant to come into Canada on condition that he present himself for further examination by an immigration officer within such time and at such place as the adjudicator may direct.

a) doit lui accorder le droit d'établissement et peut alors lui imposer des conditions prévues aux règlements; ou

b) peut lui accorder l'autorisation d'entrer au Canada à condition de se présenter, dans le délai et au lieu qu'il indique, devant un agent d'immigration aux fins d'examen complémentaire.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Where visitor may be granted entry

(4) Where an adjudicator decides that a person who is the subject of an inquiry is a person who, at the time of his examination, was seeking entry and that it would not be contrary to any provision of this Act or the regulations to grant entry to that person, he may grant entry to that person and, except in the case of a person who may be granted entry pursuant to subsection 19(3), impose terms and conditions of a prescribed nature.

Octroi de l'autorisation de séjour

(4) L'arbitre, après avoir conclu que la personne faisant l'objet d'une enquête avait sollicité l'autorisation de séjour au cours de son examen et qu'il ne serait contraire ni à la présente loi ni aux règlements de la lui accorder, peut la lui accorder et, sauf s'il s'agit d'une personne qui peut obtenir l'autorisation de séjour en vertu du paragraphe 19(3), lui imposer des conditions prévues aux règlements.

Removal where seeking admission

(5) Where an adjudicator decides that a person who is the subject of an inquiry is a person who, at the time of his examination, was seeking admission and is a member of an inadmissible class, he shall, subject to subsections 45(1) and 47(3),

(*a*) make a deportation order against that person, if that person is a member of an inadmissible class described in paragraph 19(1)(*c*), (*d*), (*e*), (*f*) or (*g*) or 19(2)(*a*) or (*b*); or

(*b*) make an exclusion order against that person, if that person is a member of an inadmissible class other than an inadmissible class referred to in paragraph (*a*).

Renvoi de personnes demandant l'admission

(5) L'arbitre, après avoir conclu que la personne faisant l'objet d'une enquête avait demandé l'admission au cours de son examen et qu'elle fait partie d'une catégorie non admissible, doit, sous réserve des paragraphes 45(1) et 47(3),

a) en prononcer l'expulsion au cas où elle fait partie de l'une des catégories non admissibles visées aux alinéas 19(1)*c*), *d*), *e*), *f*) ou *g*) ou 19(2)*a*) ou *b*); ou

b) en prononcer l'exclusion au cas où elle fait partie d'une catégorie non admissible non visée à l'alinéa *a*).

Deportation or departure of other than permanent residents

(6) Where an adjudicator decides that a person who is the subject of an inquiry is a person described in subsection 27(2), he shall, subject to subsections 45(1) and 47(3), make a deportation order against the person unless, in the case of a person other than a person described in paragraph 19(1)(*c*), (*d*), (*e*), (*f*) or (*g*) or 27(2)(*c*), (*h*) or (*i*), he is satisfied that

(*a*) having regard to all the circumstances of the case, a deportation order ought not to be made against the person, and

(*b*) the person will leave Canada on or before a date specified by the adjudicator,

in which case he shall issue a departure notice to the person specifying therein the date on or before which the person is required to leave Canada.

Expulsion ou interdiction de séjour des non-résidents permanents

(6) L'arbitre, après avoir conclu que la personne faisant l'objet d'une enquête est visée par le paragraphe 27(2), doit, sous réserve des paragraphes 45(1) et 47(3), en prononcer l'expulsion; cependant, dans le cas d'une personne non visée aux alinéas 19(1)*c*), *d*), *e*), *f*) ou *g*) ou 27(2)*c*), *h*) ou *i*), l'arbitre doit émettre un avis d'interdiction de séjour fixant à ladite personne un délai pour quitter le Canada, s'il est convaincu

a) qu'une ordonnance d'expulsion ne devrait pas être rendue eu égard aux circonstances de l'espèce; et

b) que ladite personne quittera le Canada dans le délai imparti.

Where supporting member of family

33. (1) Where a deportation order is made against or a departure notice is issued to a member of a family on whom other members of the family in Canada are dependent for support, any member of the family dependent on such member may be included in that

Soutien de famille

33. (1) En cas d'expulsion ou d'interdiction de séjour d'une personne ayant à charge des membres de sa famille au Canada, ceux-ci, à l'exception des citoyens canadiens et des résidents permanents âgés d'au moins dix-huit ans, peuvent également être visés

POOR COPY
COPIE DE QUALITEE INFERIEURE

order or notice and be removed from or required to leave Canada but no person shall be so included in such order or notice if he is a Canadian citizen or is a permanent resident who is eighteen or more years of age.

dans l'ordonnance d'expulsion ou l'avis d'interdiction de séjour et renvoyés du Canada ou invités à quitter le pays.

Hearing required

(2) No person may be included in a deportation order or a departure notice pursuant to subsection (1) unless that person has been given an opportunity to be heard at an inquiry.

(2) Nul ne peut être visé dans une ordonnance d'expulsion ni dans un avis d'interdiction de séjour conformément au paragraphe (1), sans avoir eu la possibilité de se faire entendre au cours d'une enquête.

Nécessité d'une audition

Deeming provision

(3) When a person is included in a deportation order pursuant to subsection (1), he shall, except for the purposes of subsection 57(1), be deemed to be a person against whom a deportation order has been made.

(3) Toute personne visée dans une ordonnance d'expulsion en vertu du paragraphe (1) est, sauf aux fins du paragraphe 57(1), réputée avoir fait l'objet d'une ordonnance d'expulsion.

Application de l'ordonnance

Further inquiries may be held

34. No decision given under this Act prevents the holding of a further inquiry by reason of the making of another report under subsection 20(1) or 27(1) or (2) or by reason of arrest and detention for an inquiry pursuant to section 104.

34. Aucune décision prise en vertu de la présente loi n'interdit la tenue d'une autre enquête par suite d'un autre rapport fait en vertu des paragraphes 20(1) ou 27(1) ou (2) ou par suite d'arrestation et de détention aux fins d'enquête en vertu de l'article 104.

Autres enquêtes

Reopening of inquiry

35. (1) Subject to the regulations, an inquiry by an adjudicator may be reopened at any time by that adjudicator or by any other adjudicator for the hearing and receiving of any additional evidence or testimony and the adjudicator who hears and receives such evidence or testimony may confirm, amend or reverse any decision previously given by an adjudicator.

35. (1) Sous réserve des règlements, une enquête menée par un arbitre peut être réouverte à tout moment par le même arbitre ou par un autre, à l'effet d'entendre de nouveaux témoignages et de recevoir d'autres preuves, et l'arbitre peut alors confirmer, modifier ou révoquer la décision antérieure.

Réouverture d'enquête

Where decision amended or reversed

(2) Where an adjudicator amends or reverses a decision pursuant to subsection (1), he may quash any order or notice that may have been made or issued and where he quashes any such order or notice, he shall thereupon take the appropriate action pursuant to section 32.

(2) L'arbitre qui modifie ou révoque une décision en vertu du paragraphe (1), peut infirmer toute ordonnance ou avis et, le cas échéant, doit prendre les mesures appropriées conformément à l'article 32.

Décision amendée ou révoquée

Deeming provision

(3) Where an order or notice is quashed pursuant to subsection (2), that order or notice shall be deemed never to have been made or issued.

(3) Les ordonnances ou avis infirmés en vertu du paragraphe (2), sont réputés n'avoir jamais été rendus.

Effet de la décision

Notice of right of appeal

36. Where a removal order is made against any person who has a right of appeal to the Board pursuant to section 72, the adjudicator shall forthwith inform that person of such right of appeal.

36. Au cas où la personne qui fait l'objet d'une ordonnance de renvoi a le droit d'en interjeter appel en vertu de l'article 72, l'arbitre doit immédiatement l'en aviser.

Avis de droit d'appel

POOR COPY
COPIE DE QUALITEE INFERIEURE

Minister's Permits

Issue of permits

37. (1) The Minister may issue a written permit authorizing any person to come into or remain in Canada if that person is

(*a*) in the case of a person seeking to come into Canada, a member of an inadmissible class, or

(*b*) in the case of a person in Canada, a person with respect to whom a report has been or may be made under subsection 27(2).

When permit may not be issued

(2) Notwithstanding subsection (1), a permit may not be issued to

(*a*) a person against whom a removal order has been made who has not been removed from Canada pursuant to such an order or has not otherwise left Canada, unless an appeal from that order has been allowed;

(*b*) a person to whom a departure notice has been issued who has not left Canada; or

(*c*) a person in Canada with respect to whom an appeal made pursuant to section 79 has been dismissed.

Conditions of permit

(3) A permit shall be in force for such period of time not exceeding twelve months as is specified in the permit.

Extension and cancellation

(4) The Minister may at any time, in writing, extend or cancel a permit.

Removal order following cancellation of permit

(5) The Minister may, upon the cancellation or expiration of a permit, make a removal order against the person to whom the permit was issued or direct that person to leave Canada within a specified period of time.

Deportation

(6) Where a person who has been directed by the Minister to leave Canada within a specified period of time fails to do so, the Minister may make a deportation order against that person.

Annual report to Parliament

(7) The Minister shall, within thirty days following the commencement of each fiscal year or, if Parliament is not then sitting, within the first thirty days next thereafter that Parliament is sitting, lay before Parlia-

Permis accordés par le Ministre

Délivran permis

37. (1) Le Ministre peut délivrer un permis écrit autorisant une personne à entrer au Canada ou à y demeurer. Peuvent se voir octroyer un tel permis

a) les personnes faisant partie d'une catégorie non admissible, désireuses d'entrer au Canada, ou

b) les personnes se trouvant au Canada, qui font l'objet ou sont susceptibles de faire l'objet du rapport prévu au paragraphe 27(2).

Personne n'ayant p droit au p

(2) Par dérogation au paragraphe (1), ne peuvent obtenir le permis

a) les personnes ayant fait l'objet d'une ordonnance de renvoi, qui se trouvent encore au Canada sauf si l'appel interjeté de cette ordonnance a été accueilli;

b) les interdits de séjour qui n'ont pas encore quitté le Canada; ou

c) les personnes se trouvant encore au Canada dont l'appel interjeté en vertu de l'article 79 a été rejeté.

Durée du permis

(3) Le permis est valable pour la durée qui y est indiquée et qui ne peut dépasser douze mois.

Prorogatio annulation

(4) Le Ministre peut, par écrit et à tout moment, proroger la durée de validité d'un permis ou l'annuler.

Renvoi su à l'annulat du permis

(5) Le Ministre peut, à l'annulation ou à l'expiration d'un permis, prononcer le renvoi de son titulaire ou ordonner à ce dernier de quitter le Canada dans un délai déterminé.

Ordonnan d'expulsio

(6) Le Ministre peut prononcer l'expulsion des personnes à qui il a ordonné de quitter le Canada et qui ne l'ont pas fait dans le délai imparti.

Rapport an au Parlem

(7) Le Ministre doit déposer au Parlement, dans les trente premiers jours de chaque exercice financier, ou, si le Parlement ne siège pas, dans les trente premiers jours de la séance suivante, un rapport précisant le

PART OF DOCUMENT CUT OFF
Partie du document coupé

POOR COPY
COPIE DE QUALITEE INFERIEURE

ment a report specifying the number of permits issued during the preceding calendar year and in respect of each permit issued

(*a*) to a person seeking to come into Canada, the inadmissible class of which that person is a member; or

(*b*) to a person in Canada, the applicable paragraph of subsection 27(2) pursuant to which a report has been or may be made.

nombre de permis délivrés au cours de la précédente année civile et pour chaque permis délivré

a) à une personne désireuse d'entrer au Canada, la catégorie non admissible à laquelle elle appartient; ou

b) à une personne au Canada, l'alinéa du paragraphe 27(2) qui s'applique et en vertu duquel un rapport a été fait ou peut l'être.

Landing authorized by Minister

38. (1) Notwithstanding any other provision of this Act or the regulations, the Minister may authorize the landing of any person who at the time of landing has resided continuously in Canada for at least five years under the authority of a written permit issued by the Minister under any immigration laws that were in force in Canada prior to the coming into force of this Act.

Droit d'établissement accordé par le Ministre

38. (1) Par dérogation à toute autre disposition de la présente loi et des règlements, le Ministre peut accorder le droit d'établissement à toute personne qui, au moment où ce droit est accordé, a résidé sans interruption au Canada pendant au moins cinq ans, sous le couvert d'un permis écrit délivré par le Ministre en vertu de toute loi d'immigration en vigueur au Canada avant l'entrée en vigueur de la présente loi.

Landing authorized by Governor in Council

(2) Notwithstanding any other provision of this Act or the regulations, the Governor in Council may authorize the landing of any person not described in subsection (1) who at the time of landing has resided continuously in Canada for at least five years under the authority of a written permit issued by the Minister under this Act or under this Act and any immigration laws that were in force in Canada prior to the coming into force of this Act.

Droit d'établissement accordé par le gouverneur en conseil

(2) Par dérogation à toute autre disposition de la présente loi et des règlements, le gouverneur en conseil peut accorder le droit d'établissement à toute personne non visée au paragraphe (1), qui, au moment où ce droit est accordé, a résidé sans interruption au Canada pendant au moins cinq ans sous le couvert d'un permis écrit délivré par le Ministre en vertu de la présente loi ou de la présente loi et de toute loi d'immigration en vigueur au Canada avant l'entrée en vigueur de la présente loi.

Safety and Security of Canada

Sûreté et sécurité publiques

Security certificates re visitors and others

39. (1) Notwithstanding anything in this Act, where, with respect to any person other than a Canadian citizen or permanent resident, a certificate signed by the Minister and the Solicitor General is filed with an immigration officer, a senior immigration officer or an adjudicator stating that in the opinion of the Minister and the Solicitor General, based on security or criminal intelligence reports received and considered by them, which cannot be revealed in order to protect information sources, the person named in the certificate is a person described in paragraph 19(1)(*d*), (*e*), (*f*) or (*g*) or in paragraph 27(2)(*c*), the certificate is proof of the matters stated therein without proof of the signa-

Attestations de sécurité concernant les visiteurs et autres

39. (1) Nonobstant toute disposition de la présente loi, l'attestation, concernant une personne autre qu'un citoyen canadien ou un résident permanent, signée par le Ministre et le solliciteur général, et remise à un agent d'immigration, à un agent d'immigration supérieur ou à un arbitre, déclarant que le Ministre et le solliciteur général estiment qu'à la lumière des rapports secrets qu'ils détiennent en matière de sécurité ou de criminalité et que la nécessité de protéger les sources de renseignements empêche de divulguer, la personne désignée dans l'attestation est visée par les alinéas 19(1)*d*), *e*), *f*) ou *g*) ou 27(2)*c*), fait foi de son contenu, l'authenticité des signatures et le caractère officiel

POOR COPY
COPIE DE QUALITEE INFERIEURE

tures or official character of the persons appearing to have signed the certificate unless called into question by the Minister or the Solicitor General.

des personnes l'ayant apparemment signée ne pouvant être contestés que par le Ministre ou par le solliciteur général.

Annual report to Parliament

(2) The Minister shall, within thirty days following the commencement of each fiscal year or, if Parliament is not then sitting, within the first thirty days next thereafter that Parliament is sitting, lay before Parliament a report specifying the number of certificates referred to in subsection (1) that were filed during the preceding calendar year.

Rapport annuel au Parlement

(2) Le Ministre doit déposer devant le Parlement dans les trente premiers jours de chaque exercice financier ou, si le Parlement ne siège pas, dans les trente premiers jours de la séance suivante, un rapport précisant le nombre d'attestations visées au paragraphe (1) délivrées au cours de la précédente année civile.

Security reports re permanent residents

40. (1) Where the Minister and the Solicitor General are of the opinion, based on security or criminal intelligence reports received and considered by them, that a permanent resident is a person described in subparagraph 19(1)(*d*)(ii), or paragraph 19(1)(*e*) or (*g*) or 27(1)(*c*), they may make a report to the Chairman of the Special Advisory Board established pursuant to section 41.

Rapports de sécurité concernant les résidents permanents

40. (1) Au cas où le Ministre et le solliciteur général estiment qu'à la lumière des rapports secrets qu'ils détiennent en matière de sécurité ou de criminalité, un résident permanent est visé par le sous-alinéa 19(1)*d*)(ii), ou les alinéas 19(1)*e*) ou *g*) ou 27(1)*c*), ils peuvent adresser un rapport au président du conseil consultatif spécial institué en vertu de l'article 41.

Duties of Special Advisory Board

(2) In considering a report made by the Minister and the Solicitor General pursuant to subsection (1), the Special Advisory Board shall

(*a*) request the Minister or the Solicitor General to provide such additional information as in its opinion is necessary and relevant; and

(*b*) consult with such Departments of the Government of Canada as it deems appropriate to enable it to determine what circumstances and information should not be disclosed on the ground that disclosure would be injurious to national security or to the safety of persons in Canada.

Fonctions du conseil consultatif spécial

(2) Le conseil consultatif spécial, dans l'examen du rapport adressé par le Ministre et le solliciteur général conformément au paragraphe (1), doit

a) demander au Ministre ou au solliciteur général les renseignements supplémentaires qu'il estime nécessaires et pertinents; et

b) consulter les ministères du gouvernement du Canada qui, à son avis, peuvent lui permettre de déterminer les renseignements qui ne doivent pas être divulgués au motif que leur divulgation serait préjudiciable à la sécurité nationale ou à la sécurité de personnes se trouvant au Canada.

Duties of Chairman of Special Advisory Board

(3) The Chairman of the Special Advisory Board shall take all necessary precautions

(*a*) to prevent the disclosure of any circumstances and information that in his opinion should not be disclosed on the ground that disclosure would be injurious to national security or to the safety of persons in Canada; and

Fonctions du président du conseil consultatif spécial

(3) Le président du conseil consultatif spécial doit prendre les précautions nécessaires

a) pour éviter la divulgation de renseignements qui, à son avis, ne doivent pas être divulgués au motif que leur divulgation serait préjudiciable à la sécurité nationale ou à la sécurité de personnes se trouvant au Canada; et

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*b*) to protect the secrecy of any source of any information referred to in paragraph (*a*).

b) pour assurer le caractère secret des sources de renseignements visés à l'alinéa *a*).

Information to be provided

(4) Where the Chairman of the Special Advisory Board receives a report pursuant to subsection (1), he shall, as soon as reasonably practicable, convene a meeting of that Board to consider the report and shall send to the person to whom the report relates at his last known address

(*a*) a notice that it is proposed to remove him from Canada in accordance with this section;

(*b*) a statement summarizing such of the circumstances and information available to the Special Advisory Board as will, in the opinion of the Chairman of that Board, enable the person to be as fully informed as possible of the nature of the allegations made against him, having regard to the duties of that Board and the Chairman thereof referred to in subsections (2) and (3); and

(*c*) a notice of the time and place where the person may be heard in respect of the proposal to remove him from Canada.

Communication de renseignements

(4) Le président du conseil consultatif spécial, saisi d'un rapport visé au paragraphe (1), doit convoquer, dès que les circonstances le permettent, une réunion du conseil pour examiner le rapport et doit adresser à la personne visée, à sa dernière adresse connue,

a) un avis précisant que son renvoi du Canada en vertu du présent article est proposé;

b) un exposé résumant les renseignements dont dispose le conseil consultatif spécial et qui, de l'avis de son président, informeront, dans la mesure du possible, la personne de la nature des allégations portées contre elle, compte tenu des fonctions incombant au conseil et à son président en vertu des paragraphes (2) et (3); et

c) un avis des date et lieu où la personne pourra être entendue au sujet de son renvoi proposé du Canada.

Right to be heard

(5) The Special Advisory Board shall permit the person with respect to whom a report has been made by the Minister and the Solicitor General pursuant to subsection (1) to present evidence, to be heard personally or by counsel and to have testify, on his behalf, persons who are likely to give material evidence.

Droit d'être entendu

(5) Le conseil consultatif spécial doit permettre à la personne faisant l'objet du rapport adressé par le Ministre et le solliciteur général en vertu du paragraphe (1), de présenter des preuves, d'être entendue en personne ou par l'intermédiaire d'un conseil et de citer les personnes susceptibles de rendre un témoignage important en sa faveur.

Proceedings not open to public

(6) The proceedings of the Special Advisory Board shall be separate and apart from the public.

Huis clos

(6) La procédure devant le conseil consultatif spécial se déroule à huis clos.

Power to require information

(7) Subject to section 119, the Special Advisory Board may require any person, other than the person with respect to whom the report has been made by the Minister and the Solicitor General pursuant to subsection (1), to make available to it any relevant information and may receive any evidence or information considered credible or trustworthy by it.

Pouvoirs d'exiger des renseignements

(7) Sous réserve de l'article 119, le conseil consultatif spécial peut exiger que toute personne, autre que celle qui fait l'objet du rapport adressé par le Ministre et le solliciteur général en vertu du paragraphe (1), lui fournisse des renseignements pertinents à l'examen visé au paragraphe (2); il peut recevoir les preuves et renseignements qu'il considère dignes de foi.

Termination of proceedings

(8) Where at any time before a report is made pursuant to subsection (9), the Special Advisory Board becomes of the opinion that

Arrêt de la procédure

(8) Au cas où le conseil consultatif spécial, avant d'adresser un rapport conformément au paragraphe (9), estime que les renseigne-

POOR COPY
COPIE DE QUALITEE INFERIEURE

the circumstances and information revealed to it are such that the disclosure thereof would not be injurious to national security or to the safety of persons in Canada, it shall terminate its proceedings under this section and advise the Minister and the Solicitor General of the termination.

ments portés à sa connaissance sont de telle nature que leur divulgation ne serait préjudiciable ni à la sécurité nationale ni à la sécurité de personnes se trouvant au Canada, il doit mettre fin à la procédure engagée en vertu du présent article et en aviser le Ministre et le solliciteur général.

Report by Special Advisory Board

(9) Where the Special Advisory Board is satisfied that a person to whom a report of the Minister and the Solicitor General referred to in subsection (1) relates has been given an opportunity to be heard in accordance with this section, it shall make a report forthwith to the Governor in Council on all matters relating thereto.

Rapport du conseil consultatif spécial

(9) Le conseil consultatif spécial, après avoir constaté que la personne faisant l'objet du rapport du Ministre et du solliciteur général, visé au paragraphe (1), a eu l'occasion de se faire entendre conformément au présent article, dont immédiatement adresser un rapport au gouverneur en conseil sur toutes questions relatives à ce sujet.

Deportation by order in council

(10) Where proceedings under this section have not been terminated pursuant to subsection (8) and where the Governor in Council is satisfied, after having considered the reports referred to in subsections (1) and (9), that the person concerned is a person described in subparagraph 19(1)(*d*)(ii) or paragraph 19(1)(*e*) or (*g*) or 27(1)(*c*), the Governor in Council may make a deportation order against that person.

Expulsion par décret en conseil

(10) Si le conseil consultatif spécial n'a pas, en vertu du paragraphe (8), mis fin à la procédure engagée en vertu du présent article, le gouverneur en conseil peut prononcer par décret l'expulsion de toute personne dont il est convaincu, après examen des rapports visés aux paragraphes (1) et (9), qu'elle tombe sous le coup du sous-alinéa 19(1)*d*)(ii), ou des alinéas 19(1)*e*) ou *g*) ou 27(1)*c*).

Board established

41. (1) There is hereby established a board, to be called the Special Advisory Board, consisting of not more than three members to be appointed by the Governor in Council, of whom at least one shall be a retired judge of a superior court.

Création du conseil

41. (1) Est institué le conseil consultatif spécial, composé d'au plus trois membres nommés par le gouverneur en conseil; au moins un des membres doit être un juge d'une cour supérieure à la retraite.

Chairman and Vice-Chairman

(2) The Governor in Council shall designate one of the members appointed pursuant to subsection (1) to be Chairman of the Special Advisory Board and one such member to be Vice-Chairman thereof.

Président et vice-président

(2) Le gouverneur en conseil désigne, parmi les membres visés au paragraphe (1), un président et un vice-président.

Function of Board

42. It is the function of the Special Advisory Board

(*a*) to consider any reports made by the Minister and the Solicitor General pursuant to subsection 40(1); and

(*b*) to advise the Minister on such matters relating to the safety and security of Canada for which the Minister is responsible under this Act as the Minister may refer to it for its consideration.

Tâche du conseil

42. Le conseil consultatif spécial a pour tâche

a) d'examiner les rapports que lui adressent le Ministre et le solliciteur général conformément au paragraphe 40(1); et

b) de conseiller le Ministre sur les questions qu'il lui soumet, relatives à la sûreté et la sécurité publiques et relevant de sa compétence en vertu de la présente loi.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Claims to Canadian Citizenship

Where claim to Canadian citizenship at inquiry

43. (1) Where, at any time during an inquiry, the person who is the subject of the inquiry claims that he is a Canadian citizen and the adjudicator presiding at the inquiry is not satisfied that the person is a Canadian citizen, the inquiry shall be continued and, if it is determined that, but for the person's claim that he is a Canadian citizen, a removal order or a departure notice would be made or issued with respect to that person, the inquiry shall be adjourned.

Application for certificate of citizenship

(2) Where an inquiry in respect of a person is adjourned pursuant to subsection (1), that person's claim that he is a Canadian citizen shall be referred to such member of the Queen's Privy Council for Canada as is designated by the Governor in Council to act as the Minister for the purposes of the *Citizenship Act* and that person shall forthwith make an application for a certificate of citizenship pursuant to subsection 11(1) of that Act.

Where certificate of citizenship issued

44. (1) Where a certificate of citizenship is issued under section 11 of the *Citizenship Act* to a person who is the subject of an inquiry, the adjudicator who was presiding at the inquiry or any other adjudicator shall terminate the inquiry and let that person come into or remain in Canada, as the case may be.

Where inquiry resumed

(2) Where a person who is the subject of an inquiry that was adjourned pursuant to subsection 43(1) does not forthwith make an application for a certificate of citizenship pursuant to subsection 11(1) of the *Citizenship Act* or where a certificate of citizenship is not issued under section 11 of that Act to a person who is the subject of an inquiry within six months from the day on which the inquiry was adjourned or within such greater period of time as the adjudicator considers appropriate in the circumstances, or where the adjudicator who was presiding at the inquiry or any other adjudicator is notified by the Minister that it has been determined that a certificate of citizenship will not be issued to that person, the inquiry shall be resumed as soon as reasonably practicable by

Revendication de la citoyenneté canadienne

Revendication de la citoyenneté canadienne en cours d'enquête

43. (1) Toute enquête, au cours de laquelle la personne en cause revendique la citoyenneté canadienne, sans en convaincre l'arbitre, doit être poursuivie; elle ne doit être ajournée que s'il est établi qu'à défaut de cette revendication, elle aurait abouti à une ordonnance de renvoi ou à un avis d'interdiction de séjour.

Demande de certificat de citoyenneté

(2) En cas d'ajournement d'enquête conformément au paragraphe (1), la revendication de citoyenneté canadienne doit être transmise au membre du Conseil privé de la Reine pour le Canada désigné par le gouverneur en conseil pour agir en qualité de Ministre aux fins de la *Loi sur la citoyenneté* et la personne en cause doit immédiatement faire une demande de certificat de citoyenneté conformément au paragraphe 11(1) de ladite loi.

Émission d'un certificat de citoyenneté

44. (1) Lorsqu'un certificat de citoyenneté est délivré conformément à l'article 11 de la *Loi sur la citoyenneté* à une personne visée par une enquête, l'arbitre qui mène l'enquête ou tout autre arbitre, doit y mettre fin et laisser ladite personne entrer ou demeurer au Canada.

Reprise de l'enquête

(2) L'enquête est reprise, dès que les circonstances le permettent, par l'arbitre qui en était chargé ou par un autre arbitre, au cas où la personne visée par l'enquête ajournée en vertu du paragraphe 43(1), ne fait pas immédiatement une demande de certificat de citoyenneté conformément au paragraphe 11(1) de la *Loi sur la citoyenneté*, ou ne se voit pas délivrer un certificat de citoyenneté conformément à l'article 11 de ladite loi, dans les six mois de l'ajournement de l'enquête ou dans le délai plus long que l'arbitre juge approprié eu égard aux circonstances, et au cas où le Ministre informe l'arbitre qui mène l'enquête ou un autre arbitre que le certificat de citoyenneté ne sera pas délivré.

POOR COPY
COPIE DE QUALITEE INFERIEURE

the adjudicator who was presiding at the inquiry or by any other adjudicator.

Idem

(3) Where an inquiry is resumed pursuant to subsection (2), the adjudicator shall make the removal order or issue the departure notice that would have been made or issued but for that person's claim that he was a Canadian citizen.

Idem

(3) A la reprise de l'enquête conformément au paragraphe (2), l'arbitre doit, comme si la revendication de citoyenneté canadienne n'avait pas été formulée, prononcer le renvoi ou l'interdiction de séjour.

Determination of Refugee Status

Reconnaissance du statut de réfugié

Where claim to refugee status at inquiry

45. (1) Where, at any time during an inquiry, the person who is the subject of the inquiry claims that he is a Convention refugee, the inquiry shall be continued and, if it is determined that, but for the person's claim that he is a Convention refugee, a removal order or a departure notice would be made or issued with respect to that person, the inquiry shall be adjourned and that person shall be examined under oath by a senior immigration officer respecting his claim.

Revendication du statut de réfugié au cours d'une enquête

45. (1) Une enquête, au cours de laquelle la personne en cause revendique le statut de réfugié au sens de la Convention, doit être poursuivie. S'il est établi qu'à défaut de cette revendication, l'enquête aurait abouti à une ordonnance de renvoi ou à un avis d'interdiction de séjour, elle doit être ajournée et un agent d'immigration supérieur doit procéder à l'interrogatoire sous serment de la personne au sujet de sa revendication.

Referral to Minister

(2) When a person who claims that he is a Convention refugee is examined under oath pursuant to subsection (1), his claim, together with a transcript of the examination with respect thereto, shall be referred to the Minister for determination.

Transmission au Ministre

(2) Après l'interrogatoire visé au paragraphe (1), la revendication, accompagnée d'une copie de l'interrogatoire, est transmise au Ministre pour décision.

Transcript to be provided

(3) A copy of the transcript of an examination under oath referred to in subsection (1) shall be forwarded to the person who claims that he is a Convention refugee.

Remise de la copie de l'interrogatoire à l'intéressé

(3) Une copie de l'interrogatoire visé au paragraphe (1) est remise à la personne qui revendique le statut de réfugié.

Determination of refugee status by Minister

(4) Where a person's claim is referred to the Minister pursuant to subsection (2), the Minister shall refer the claim and the transcript of the examination under oath with respect thereto to the Refugee Status Advisory Committee established pursuant to section 48 for consideration and, after having obtained the advice of that Committee, shall determine whether or not the person is a Convention refugee.

Décision du Ministre

(4) Le Ministre, saisi d'une revendication conformément au paragraphe (2), doit la soumettre, accompagnée d'une copie de l'interrogatoire, à l'examen du comité consultatif sur le statut de réfugié institué par l'article 48. Après réception de l'avis du comité, le Ministre décide si la personne est un réfugié au sens de la Convention.

Communication of determination

(5) When the Minister makes a determination with respect to a person's claim that he is a Convention refugee, the Minister shall thereupon in writing inform the senior immigration officer who conducted the examination under oath respecting the claim

Communication de la décision

(5) Le Ministre doit notifier sa décision par écrit, à l'agent d'immigration supérieur qui a procédé à l'interrogatoire sous serment et à la personne qui a revendiqué le statut de réfugié.

POOR COPY
COPIE DE QUALITEE INFERIEURE

and the person who claimed to be a Convention refugee of his determination.

Right to counsel

(6) Every person with respect to whom an examination under oath is to be held pursuant to subsection (1) shall be informed that he has the right to obtain the services of a barrister or solicitor or other counsel and to be represented by any such counsel at his examination and shall be given a reasonable opportunity, if he so desires and at his own expense, to obtain such counsel.

Droit à un conseil

(6) Toute personne faisant l'objet de l'interrogatoire visé au paragraphe (1) doit être informée qu'elle a droit aux services d'un avocat, d'un procureur ou de tout autre conseil pour la représenter et il doit lui être donné la possibilité de choisir un conseil, à ses frais.

Resumption of inquiry

46. (1) Where a senior immigration officer is informed pursuant to subsection 45(5) that a person is not a Convention refugee, he shall, as soon as reasonably practicable, cause the inquiry concerning that person to be resumed by the adjudicator who was presiding at the inquiry or by any other adjudicator, but no inquiry shall be resumed in any case where the person makes an application to the Board pursuant to subsection 70(1) for a redetermination of his claim that he is a Convention refugee until such time as the Board informs the Minister of its decision with respect thereto.

Reprise de l'enquête

46. (1) L'agent d'immigration supérieur, informé conformément au paragraphe 45(5) que la personne en cause n'est pas un réfugié au sens de la Convention, doit faire reprendre l'enquête, dès que les circonstances le permettent, par l'arbitre qui en était chargé ou par un autre arbitre, à moins que la personne en cause ne demande à la Commission, en vertu du paragraphe 70(1), de réexaminer sa revendication; dans ce cas, l'enquête est ajournée jusqu'à ce que la Commission notifie sa décision au Ministre.

Where not Convention refugee

(2) Where a person

(*a*) has been determined by the Minister not to be a Convention refugee and the time has expired within which an application for a redetermination under subsection 70(1) may be made, or

(*b*) has been determined by the Board not to be a Convention refugee,

the adjudicator who presides at the inquiry caused to be resumed pursuant to subsection (1) shall make the removal order or issue the departure notice that would have been made or issued but for that person's claim that he was a Convention refugee.

Non-reconnaissance du statut de réfugié au sens de la Convention

(2) L'arbitre chargé de poursuivre l'enquête en vertu du paragraphe (1), doit, comme si la revendication du statut de réfugié n'avait pas été formulée, prononcer le renvoi ou l'interdiction de séjour de la personne

a) à qui le Ministre n'a pas reconnu le statut de réfugié au sens de la Convention, si le délai pour demander le réexamen de sa revendication prévu au paragraphe 70(1) est expiré; ou

b) à qui la Commission n'a pas reconnu le statut de réfugié au sens de la Convention.

Where Convention refugee

47. (1) Where a senior immigration officer is informed that a person has been determined by the Minister or the Board to be a Convention refugee, he shall cause the inquiry concerning that person to be resumed by the adjudicator who was presiding at the inquiry or by any other adjudicator, who shall determine whether or not that person is a person described in subsection 4(2).

Reconnaissance du statut de réfugié au sens de la Convention

47. (1) L'agent d'immigration supérieur, informé que le Ministre ou la Commission a reconnu, à la personne qui le revendique, le statut de réfugié au sens de la Convention, doit faire reprendre l'enquête soit par l'arbitre qui en était chargé, soit par un autre arbitre qui détermine si la personne en cause remplit les conditions prévues au paragraphe 4(2).

POOR COPY
COPIE DE QUALITEE INFERIEURE

Where no right to remain in Canada

(2) Where an adjudicator determines that a Convention refugee is not a Convention refugee described in subsection 4(2), he shall make the removal order or issue the departure notice, as the case may be, with respect to that Convention refugee.

(2) L'arbitre doit prononcer le renvoi ou l'interdiction de séjour du réfugié au sens de la Convention qui, selon lui, ne remplit pas les conditions prévues au paragraphe 4(2).

Cas de réfugié qui n'a pas le droit de demeurer au Canada

Where right to remain in Canada

(3) Where an adjudicator determines that a Convention refugee is a Convention refugee described in subsection 4(2), he shall, notwithstanding any other provision of this Act or the regulations, allow that person to remain in Canada.

(3) Par dérogation à la présente loi et aux règlements, l'arbitre doit autoriser le réfugié au sens de la Convention qui, selon lui, remplit les conditions prévues au paragraphe 4(2), à demeurer au Canada.

Droit de demeurer au Canada

Refugee Status Advisory Committee established

48. (1) There is hereby established a Refugee Status Advisory Committee for the purpose of advising the Minister in respect of any case where a person claims that he is a Convention refugee.

48. (1) Est institué le comité consultatif sur le statut de réfugié, chargé de conseiller le Ministre en matière de revendication du statut de réfugié au sens de la Convention.

Institution du comité consultatif sur le statut de réfugié

Appointment of members

(2) The Minister shall appoint such persons as he considers appropriate to be members of the Refugee Status Advisory Committee.

(2) Le Ministre nomme, en qualité de membres du comité consultatif sur le statut de réfugié, les personnes qu'il juge qualifiées.

Nomination de membres

Service of Orders

Signification des ordonnances

Service of orders

49. A removal order or a copy thereof shall, in such manner as is prescribed, be served on the person against whom it is made and on such other persons as are prescribed.

49. L'original ou une copie d'une ordonnance de renvoi doit être signifié, de la manière prescrite, à la personne qui en fait l'objet et à toute autre personne que déterminent les règlements.

Signification des ordonnances

Execution of Orders

Exécution des ordonnances

Time of execution

50. Subject to sections 51 and 52, a removal order shall be executed as soon as reasonably practicable.

50. Sous réserve des articles 51 et 52, une ordonnance de renvoi doit être exécutée, dès que les circonstances le permettent.

Délai d'exécution

Stay of execution

51. (1) Except in the case of a person residing or sojourning in the United States or St. Pierre and Miquelon against whom a removal order is made as a result of a report made pursuant to subsection 20(1), the execution of a removal order is stayed

(*a*) in any case where the person against whom such order was made has a right of appeal to the Board, at the request of that person until twenty-four hours have elapsed from the time when he was informed pursuant to section 36 of his right of appeal;

(*b*) in any case where an appeal from such order has been filed with the Board, until

51. (1) Sauf dans le cas d'une personne résidant ou séjournant aux États-Unis ou à Saint-Pierre-et-Miquelon et faisant l'objet du rapport visé au paragraphe 20(1), il est sursis à l'exécution d'une ordonnance de renvoi

a) à la requête de la personne qui fait l'objet de l'ordonnance, au cas où elle a le droit d'appel à la Commission, durant vingt-quatre heures à compter du moment où elle a été avisée de son droit d'appel conformément à l'article 36;

b) en cas d'appel à la Commission, jusqu'à ce que cette dernière ait rendu sa décision ou déclaré qu'il y a eu renonciation à l'appel;

Sursis à exécution

POOR COPY
COPIE DE QUALITEE INFERIEURE

the appeal has been heard and disposed of or has been declared by the Board to be abandoned;

(*c*) in any case where the person, being other than a person described in paragraph 19(1)(*g*), files an appeal or signifies in writing to an immigration officer that he intends to appeal a decision of the Board to the Federal Court of Appeal, until the appeal has been heard and disposed of or the time for filing an appeal has elapsed, as the case may be; and

(*d*) in any case where the person, being other than a person described in paragraph 19(1)(*g*), files an appeal or signifies in writing to an immigration officer that he intends to appeal a decision of the Federal Court of Appeal to the Supreme Court of Canada, until the appeal has been heard and disposed of or the time for filing an appeal has elapsed, as the case may be.

c) si la personne en cause ne tombe pas sous le coup de l'alinéa 19(1)*g*) et interjette appel de la décision de la Commission à la Cour d'appel fédérale ou notifie par écrit à un agent d'immigration son intention de le faire, jusqu'à la décision de la Cour ou l'expiration du délai d'appel, selon le cas; et

d) si la personne en cause ne tombe pas sous le coup de l'alinéa 19(1)*g*) et interjette appel de la décision de la Cour d'appel fédérale à la Cour suprême du Canada ou notifie par écrit à un agent d'immigration son intention de le faire, jusqu'à la décision de la Cour suprême ou l'expiration du délai d'appel, selon le cas.

Idem

(2) A reopening of an inquiry pursuant to section 35 stays the execution of a removal order pending the decision of the adjudicator.

(2) La réouverture d'enquête visée à l'article 35 suspend, jusqu'à la décision de l'arbitre, l'exécution d'une ordonnance de renvoi.

Idem

Execution stayed where other proceedings

52. (1) A removal order shall not be executed where

(*a*) the execution of the order would directly result in a violation of any other order made by any judicial body or officer in Canada; or

(*b*) the presence in Canada of the person against whom the order was made is required in any criminal proceedings and the Minister stays the execution of the order pending the completion of those proceedings.

52. (1) Il ne sera pas procédé à l'exécution d'une ordonnance de renvoi dans les cas suivants:

a) l'exécution irait directement à l'encontre d'une autre ordonnance rendue au Canada par un organisme ou une autorité judiciaires; ou

b) la présence au Canada de la personne visée par l'ordonnance étant requise aux fins de procédures criminelles, le Ministre ordonne le sursis durant lesdites procédures.

Sursis motivé par d'autres procédures

Not to be executed until after sentence completed

(2) A removal order that has been made against a person who was, at the time it was made, an inmate of a penitentiary, gaol, reformatory or prison or becomes an inmate of such an institution before the order is executed shall not be executed until the person has completed the sentence or term of imprisonment imposed or as reduced by a statute or other law or by an act of clemency.

(2) L'ordonnance de renvoi rendue à l'égard d'une personne alors détenue dans un pénitencier, une prison ou une maison de correction, ou qui est détenue dans une telle institution avant que l'ordonnance n'ait été exécutée, ne peut être exécutée tant que cette personne n'aura pas purgé sa peine, compte tenu des réductions statutaires de peine et des mesures de clémence.

Sursis jusqu'à purgation de la peine

Validity not affected by lapse of time

53. No removal order becomes invalid by reason of any lapse of time between its making and execution.

53. L'ordonnance de renvoi est imprescriptible jusqu'à exécution.

Imprescriptibilité de l'ordonnance

POOR COPY
COPIE DE QUALITEE INFERIEURE

Voluntary departure

54. (1) Unless otherwise directed by the Minister, a person against whom a removal order is made may be allowed to leave Canada voluntarily and to select the country for which he wishes to depart.

Place to which removed

(2) Where a person is not allowed to leave Canada voluntarily and to select the country for which he wishes to depart pursuant to subsection (1), he shall, subject to subsection (3), be removed from Canada to

(*a*) the place from which he came to Canada;

(*b*) the country in which he last permanently resided before he came to Canada;

(*c*) the country of which he is a national or citizen; or

(*d*) the country of his birth.

Idem

(3) Where a person is to be removed from Canada and no country referred to in subsection (2) is willing to receive him, the person, with the approval of the Minister, or the Minister, may select any other country that is willing to receive that person within a reasonable time as the place to which that person shall be removed.

Removal of Convention refugee

55. Notwithstanding subsections 54(2) and (3), a Convention refugee shall not be removed from Canada to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion unless he is

(*a*) a member of an inadmissible class described in paragraph 19(1)(*c*), (*e*), (*f*) or (*g*),

(*b*) a person described in paragraph 27(1)(*c*) or 27(2)(*c*), or

(*c*) a person who has been convicted in Canada of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed,

and the Minister is of the opinion that the person should not be allowed to remain in Canada.

Where no execution of removal order

56. Where a person against whom a removal order is made is removed from or otherwise leaves Canada, the order shall be deemed not to have been executed if the

Départ volontaire

54. (1) Sauf instructions contraires du Ministre, la personne qui fait l'objet d'une ordonnance de renvoi peut être autorisée à quitter le Canada de son plein gré et à choisir le pays où elle veut se rendre.

Pays de destination

(2) La personne qui n'a pas été autorisée à quitter le Canada de son plein gré et à choisir le pays où elle veut se rendre, en vertu du paragraphe (1), sera, sous réserve du paragraphe (3), renvoyée

a) à son point de départ;

b) au pays où elle avait sa dernière résidence permanente avant le Canada;

c) au pays dont elle est le ressortissant; ou

d) à son pays de naissance.

Idem

(3) La personne renvoyée du Canada et qu'aucun pays visé au paragraphe (2) ne veut recevoir, peut, avec l'accord du Ministre, choisir comme lieu de destination tout autre pays disposé à la recevoir dans un délai raisonnable. Ce choix appartient également au Ministre.

Renvoi des réfugiés au sens de la Convention

55. Par dérogation aux paragraphes 54(2) et (3), un réfugié au sens de la Convention ne peut être renvoyé dans un pays où sa vie ou sa liberté seraient menacées, du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques à moins

a) qu'il ne fasse partie des personnes non admissibles visées aux alinéas 19(1)*c*), *e*), *f*) ou *g*),

b) qu'il ne soit une des personnes visées aux alinéas 27(1)*c*) ou 27(2)*c*), ou

c) qu'il n'ait été déclaré coupable au Canada d'une infraction prévue par une loi du Parlement et punissable d'une peine d'au moins dix ans d'emprisonnement,

et que le Ministre ne soit d'avis qu'il ne devrait pas être autorisé à demeurer au Canada.

Non-exécution de l'ordonnance de renvoi

56. Une ordonnance de renvoi est réputée n'avoir pas été exécutée au cas où la personne qui en fait l'objet a été renvoyée ou a quitté le Canada mais n'a pu obtenir la

POOR COPY
COPIE DE QUALITEE INFERIEURE

person is not granted lawful permission to be in any other country and that person may, notwithstanding section 57, come into Canada without the consent of the Minister.

Effect of Removal Orders

Effect of deportation order

57. (1) Subject to section 58, where a deportation order is made against a person, the person shall not, after he is removed from or otherwise leaves Canada, come into Canada without the consent of the Minister unless an appeal from the order has been allowed.

Effect of exclusion order

(2) Subject to section 58, where an exclusion order is made against a person, the person shall not, after he is removed from or otherwise leaves Canada, come into Canada without the consent of the Minister at any time during the twelve month period immediately following the day on which that person is removed from or otherwise leaves Canada unless an appeal from the order has been allowed.

Where person allowed to return by Board

58. (1) Where, pursuant to section 77, the Board allows a person to return to Canada for the hearing of his appeal against a removal order, the person may come into Canada for such purpose without the consent of the Minister.

Where execution of removal order stayed

(2) Where, pursuant to subsection 75(1), the Board directs that execution of a removal order be stayed, the person against whom the order was made does not require the consent of the Minister to come into Canada at any time during the period for which such execution is stayed.

permission de séjourner dans aucun autre pays. Ladite personne peut, par dérogation à l'article 57, revenir au Canada sans l'autorisation du Ministre.

Effet des ordonnances de renvoi

Effet de l'ordonnance d'expulsion

57. (1) Sous réserve de l'article 58, la personne qui fait l'objet d'une ordonnance d'expulsion ne peut plus revenir au Canada sans l'autorisation du Ministre, à moins qu'un appel de ladite ordonnance n'ait été accueilli.

Effet de l'ordonnance d'exclusion

(2) Sous réserve de l'article 58, la personne qui fait l'objet d'une ordonnance d'exclusion ne peut plus revenir au Canada, sans l'autorisation du Ministre, durant un délai de douze mois à compter de son départ du Canada, à moins qu'un appel de ladite ordonnance n'ait été accueilli.

Autorisation de retour accordée par la Commission

58. (1) La personne autorisée par la Commission, en vertu de l'article 77, à revenir au Canada pour l'audition de son appel interjeté contre une ordonnance de renvoi, peut entrer au Canada à cette fin, sans une autorisation du Ministre.

Sursis à l'exécution d'une ordonnance de renvoi

(2) Dans les cas où la Commission, conformément au paragraphe 75(1), ordonne de surseoir à l'exécution d'une ordonnance de renvoi, la personne qui en fait l'objet peut entrer au Canada sans l'autorisation du Ministre, tant que dure le sursis d'exécution.

PART IV

APPEALS

Establishment of Board

Board established

59. (1) There is hereby established a board, to be called the Immigration Appeal Board, that shall, in respect of appeals made pursuant to sections 72, 73 and 79 and in respect of applications for redetermination made pursuant to section 70, have sole and exclusive jurisdiction to hear and determine

PARTIE IV

APPELS

Institution de la Commission

Institution de la Commission

59. (1) Est instituée la Commission d'appel de l'immigration ayant compétence exclusive, en matière d'appels visés aux articles 72, 73 et 79 et en matière de demande de réexamen visée à l'article 70, pour entendre et juger sur des questions de droit et de fait, y compris des questions de compétence, rela-

POOR COPY
COPIE DE QUALITEE INFERIEURE

all questions of law and fact, including questions of jurisdiction, that may arise in relation to the making of a removal order or the refusal to approve an application for landing made by a member of the family class.

tives à la confection d'une ordonnance de renvoi ou au rejet d'une demande de droit d'établissement présentée par une personne appartenant à la catégorie de la famille.

Membership of Board

(2) The Board shall consist of not less than seven and not more than eighteen members to be appointed by the Governor in Council.

(2) La Commission est composée de sept à dix-huit commissaires nommés par le gouverneur en conseil.

Composition

Tenure of members

60. (1) Subject to subsections (3) and (5), each member shall be appointed to hold office during good behaviour for a term not exceeding ten years, but may be removed by the Governor in Council for cause.

60. (1) Sous réserve des paragraphes (3) et (5), les commissaires sont nommés à titre inamovible pour un mandat maximal de dix ans. Ils peuvent cependant faire l'objet d'une révocation motivée, de la part du gouverneur en conseil.

Mandat

Re-appointment

(2) Each member is eligible for re-appointment.

(2) Le mandat des commissaires est renouvelable.

Renouvellement de mandat

Retirement

(3) A member ceases to hold office on attaining the age of seventy years.

(3) La limite d'âge pour exercer les fonctions de commissaire est fixée à soixante-dix ans.

Limite d'âge

Age limit for appointment

(4) No person who has attained the age of sixty-five years shall be appointed a member.

(4) Quiconque a atteint l'âge de soixante-cinq ans ne peut être nommé commissaire.

Âge limite à la nomination

Former members

(5) Each member who, immediately prior to the coming into force of this Act, was a permanent member of the Immigration Appeal Board established by section 3 of the *Immigration Appeal Board Act*, as it read before it was repealed by subsection 128(1) of this Act, continues in office as a member of the Board and shall hold such office during good behaviour but may be removed by the Governor in Council for cause.

(5) A l'entrée en vigueur de la présente loi, les membres permanents de la Commission d'appel de l'immigration établie par l'article 3 de la *Loi sur la Commission d'appel de l'immigration*, abrogée par le paragraphe 128(1) de la présente loi, sont maintenus en fonctions en qualité de commissaires à titre inamovible. Ils peuvent cependant faire l'objet d'une révocation motivée, de la part du gouverneur en conseil.

Les anciens membres

Chairman and Vice-Chairmen

61. (1) The Governor in Council shall designate one of the members to be Chairman of the Board and not more than five of the members to be Vice-Chairmen of the Board.

61. (1) Le gouverneur en conseil choisit, parmi les commissaires, un président et un maximum de cinq vice-présidents.

Le président et les vice-présidents

Absence or incapacity

(2) In the event of the absence or incapacity of the Chairman or a Vice-Chairman or if any such office is vacant, the Minister may designate another member to act as Chairman or Vice-Chairman during his absence or incapacity or until the vacancy is filled, as the case may be, but where the Chairman is absent or unable to act or his office is vacant and no member has been so designated to act in his stead, a Vice-Chairman designated by the Minister has and may exercise and per-

(2) En cas d'absence ou d'empêchement du président ou d'un vice-président, ou en cas de vacance de leur poste, le Ministre peut désigner un autre commissaire pour les remplacer pendant cette période. A défaut de désignation d'un commissaire pour remplacer le président, le Ministre peut désigner un vice-président pour exercer les pouvoirs et attributions du président.

Absence ou empêchement

POOR COPY
COPIE DE QUALITEE INFERIEURE

form all the powers and duties of the Chairman.

Qualifications of members

(3) Subject to subsections (2) and (4), the Chairman and at least two Vice-Chairmen shall be barristers or advocates of at least five years standing at the bar of a province.

(3) Sous réserve des paragraphes (2) et (4), le président et au moins deux vice-présidents doivent être des avocats inscrits au barreau d'une province depuis au moins cinq ans.

Qualités requises

Former Chairman and Vice-Chairmen

(4) The member who, immediately prior to the coming into force of this Act, was Chairman of the Immigration Appeal Board established by section 3 of the *Immigration Appeal Board Act*, as it read before it was repealed by subsection 128(1) of this Act, and each member who at that time was a Vice-Chairman of that Board, shall continue to hold such office under this Act.

(4) A l'entrée en vigueur de la présente loi, le président et les vice-présidents en exercice de la Commission d'appel de l'immigration établie par l'article 3 de la *Loi sur la Commission d'appel de l'immigration*, abrogée par le paragraphe 128(1) de la présente loi, conservent leur poste en vertu de la présente loi.

Anciens président et vice-présidents

Remuneration and expenses

62. Each member shall be paid such remuneration for his services as is fixed by the Governor in Council, and is entitled to be paid reasonable travel and living expenses incurred by him while absent from his ordinary place of residence in the course of his duties under this Act.

62. Le gouverneur en conseil fixe le traitement des commissaires; ceux-ci sont indemnisés des frais raisonnables de déplacement et de séjour engagés dans l'exercice de leurs fonctions en vertu de la présente loi, hors de leur lieu ordinaire de résidence.

Traitement et frais

Chief executive officer

63. The Chairman is the chief executive officer of the Board and has supervision over and direction of the work and staff of the Board.

63. Le président est le principal dirigeant de la Commission. Il en surveille les travaux et en dirige le personnel.

Principal dirigeant

Head office

64. (1) The head office of the Board shall be in the National Capital Region as described in the schedule to the *National Capital Act* and the Chairman and such other members as may be designated by the Governor in Council shall live in that Region or within reasonable commuting distance thereof.

64. (1) La Commission a son siège dans la région de la Capitale nationale définie à l'annexe de la *Loi sur la Capitale nationale*. Le président ainsi que les commissaires désignés par le gouverneur en conseil doivent résider dans ladite région ou à une distance raisonnable pour pouvoir se rendre assez rapidement au siège.

Siège

Sittings

(2) The Board may sit at such places in Canada as the Chairman considers appropriate in the circumstances.

(2) La Commission peut siéger partout au Canada aux lieux que le président juge appropriés eu égard aux circonstances.

Séances

Quorum

(3) The Chairman and not less than two other members, or a Vice-Chairman and not less than two other members, constitute a quorum of the Board.

(3) Le président, ou un vice-président, et au moins deux commissaires constituent le quorum.

Quorum

Court of record

65. (1) The Board is a court of record and shall have an official seal, which shall be judicially noticed.

65. (1) La Commission est une cour d'archives; elle a un sceau officiel dont l'authenticité est admise d'office.

Cour d'archives

Power to examine witnesses, etc

(2) The Board has, as regards the attendance, swearing and examination of witnesses,

(2) La Commission a, en ce qui concerne la présence, la prestation de serment et l'in-

Interrogatoire des témoins, etc.

POOR COPY
COPIE DE QUALITEE INFERIEURE

the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record and, without limiting the generality of the foregoing, may

(*a*) issue a summons to any person requiring him to appear at the time and place mentioned therein to testify to all matters within his knowledge relative to a subject-matter before the Board and to bring with him and produce any document, book or paper that he has in his possession or under his control relative to such subject-matter;

(*b*) administer oaths and examine any person on oath; and

(*c*) during a hearing, receive such additional evidence as it may consider credible or trustworthy and necessary for dealing with the subject-matter before it.

terrogatoire des témoins, la production et l'examen des documents, l'exécution de ses ordonnances, et toute autre question relevant de sa compétence, tous les pouvoirs, droits et privilèges d'une cour supérieure d'archives et peut notamment

a) adresser à toute personne une citation l'enjoignant à comparaître aux date et lieu indiqués pour témoigner sur toutes questions pertinentes à la contestation et dont elle a connaissance, et à apporter et produire tout document, livre ou écrit en sa possession ou sous sa responsabilité et se rapportant à cette contestation;

b) faire prêter serment et interroger toute personne sous serment; et

c) recevoir, au cours d'une audition, toute preuve supplémentaire qu'elle considère digne de foi et pertinente.

Reasons

(3) The Board may, and at the request of either of the parties to an appeal made pursuant to section 72 or 73 shall, give reasons for its disposition of the appeal.

Motifs

(3) La Commission peut et, sur demande de l'une des parties à un appel visé aux articles 72 ou 73, elle doit faire part des motifs de sa décision.

Dispositions and determinations after member ceases to hold office

66. (1) Where a member resigns his office or otherwise ceases to hold office, he may, at the request of the Chairman, at any time within eight weeks after such event take part in the disposition of any appeal or determination in respect of any application for redetermination previously heard or considered by him, and for any such purpose he shall be deemed to be a member.

Décision rendue par un commissaire qui a cessé d'exercer ses fonctions

66. (1) Le commissaire qui a cessé d'exercer ses fonctions par suite de démission ou pour tout autre motif, peut, à la demande du président et dans un délai de huit semaines après la cessation de ses fonctions, participer à toute décision sur les appels et les demandes de réexamen qu'il avait préalablement entendus ou étudiés. A ces fins, il est réputé agir en qualité de commissaire.

Where member unable to take part in disposition or determination

(2) Where a person to whom subsection (1) applies or any other member by whom an appeal or an application for redetermination has been heard is unable to take part in the disposition or determination thereof or has died, the remaining members who heard the appeal or application for redetermination may make the disposition or determination and for that purpose shall be deemed to constitute the Board.

Impossibilité pour un commissaire de participer à une décision

(2) En cas de décès ou d'empêchement du commissaire visé au paragraphe (1) ou de tout autre commissaire qui a entendu un appel ou une demande de réexamen, les autres commissaires qui ont siégé avec lui peuvent rendre la décision, et à cette fin ils sont réputés constituer la Commission.

Board may make rules

67. The Board may, subject to the approval of the Governor in Council, make rules not inconsistent with this Act governing the activities of the Board and the practice and

Pouvoir réglementaire

67. La Commission peut, sous réserve de l'approbation du gouverneur en conseil, établir des règles, compatibles avec la présente loi, concernant ses activités, ainsi que la pra-

POOR COPY
COPIE DE QUALITEE INFERIEURE

procedure in relation to appeals, applications for redetermination and applications for release made to the Board under this Act.

tique et la procédure en matière d'appel, de demande de réexamen et de demande de mise en liberté en vertu de la présente loi.

Application of *Public Service Superannuation Act*

68. For the purposes of the *Public Service Superannuation Act* the members appointed under subsection 59(2) and the members continued under subsection 60(5) shall be deemed to be employed in the Public Service.

68. Aux fins de la *Loi sur la pension de la Fonction publique*, les commissaires nommés en vertu du paragraphe 59(2) ainsi que les membres de l'ancienne Commission maintenus en fonctions en vertu du paragraphe 60(5) sont réputés employés de la Fonction publique.

Application de la *Loi sur la pension de la Fonction publique*

Report by Board

69. (1) The Chairman shall, before the commencement of each fiscal year, prepare and forward to the Minister a report of the operations of the Board for the preceding calendar year.

69. (1) Avant le début de chaque exercice financier, le président doit préparer et adresser au Ministre un rapport sur les activités de la Commission au cours de la précédente année civile.

Rapport de la Commission

Tabling report

(2) The Minister shall, within thirty days following the commencement of each fiscal year or, if Parliament is not then sitting, within the first thirty days next thereafter that Parliament is sitting, lay before Parliament a copy of the report received by him from the Chairman.

(2) Le Ministre doit déposer devant le Parlement, dans les trente premiers jours de chaque exercice financier ou, si le Parlement ne siège pas, dans les trente premiers jours de la prochaine séance, une copie du rapport du président.

Dépôt du rapport

Redeterminations and Appeals

Demandes de réexamen et appels

Application for redetermination of refugee claim

70. (1) A person who claims to be a Convention refugee and has been informed in writing by the Minister pursuant to subsection 45(5) that he is not a Convention refugee may, within such period of time as is prescribed, make an application to the Board for a redetermination of his claim that he is a Convention refugee.

70. (1) La personne qui a revendiqué le statut de réfugié au sens de la Convention et à qui le Ministre a fait savoir par écrit, conformément au paragraphe 45(5), qu'elle n'avait pas ce statut, peut, dans le délai prescrit, présenter à la Commission une demande de réexamen de sa revendication.

Demande de réexamen de revendication

Declaration concerning claim

(2) Where an application is made to the Board pursuant to subsection (1), the application shall be accompanied by a copy of the transcript of the examination under oath referred to in subsection 45(1) and shall contain or be accompanied by a declaration of the applicant under oath setting out

(*a*) the nature of the basis of the application;

(*b*) a statement in reasonable detail of the facts on which the application is based;

(*c*) a summary in reasonable detail of the information and evidence intended to be offered at the hearing; and

(2) Toute demande présentée à la Commission en vertu du paragraphe (1) doit être accompagnée d'une copie de l'interrogatoire sous serment visé au paragraphe 45(1) et contenir ou être accompagnée d'une déclaration sous serment du demandeur contenant

a) le fondement de la demande;

b) un exposé suffisamment détaillé des faits sur lesquels repose la demande;

c) un résumé suffisamment détaillé des renseignements et des preuves que le demandeur se propose de fournir à l'audition; et

d) toutes observations que le demandeur estime pertinentes.

Déclaration relative à la revendication

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*d*) such other representations as the applicant deems relevant to the application.

Consideration of declaration and disposition thereof

71. (1) Where the Board receives an application referred to in subsection 70(2), it shall forthwith consider the application and if, on the basis of such consideration, it is of the opinion that there are reasonable grounds to believe that a claim could, upon the hearing of the application, be established, it shall allow the application to proceed, and in any other case it shall refuse to allow the application to proceed and shall thereupon determine that the person is not a Convention refugee.

Examen et décision

71. (1) La Commission, saisie d'une demande visée au paragraphe 70(2), doit l'examiner sans délai. A la suite de cet examen, la demande suivra son cours au cas où la Commission estime que le demandeur pourra vraisemblablement en établir le bien-fondé à l'audition; dans le cas contraire, aucune suite n'y est donnée et la Commission doit décider que le demandeur n'est pas un réfugié au sens de la Convention.

Minister may be represented

(2) Where pursuant to subsection (1) the Board allows an application to proceed, it shall notify the Minister of the time and place where the application is to be heard and afford the Minister a reasonable opportunity to be heard.

Intervention du Ministre

(2) Au cas où, conformément au paragraphe (1), la Commission permet à la demande de suivre son cours, elle avise le Ministre des date et lieu de l'audition et lui donne l'occasion de se faire entendre.

Notification of decision

(3) Where the Board has made its determination as to whether or not a person is a Convention refugee, it shall, in writing, inform the Minister and the applicant of its decision.

Notification de la décision

(3) La Commission, après s'être prononcée sur le statut du demandeur, en informe par écrit le Ministre et le demandeur.

Reasons

(4) The Board may, and at the request of the applicant or the Minister shall, give reasons for its determination.

Motifs de la décision

(4) La Commission peut et, à la requête du demandeur ou du Ministre, doit motiver sa décision.

Appeals by permanent residents and persons in possession of returning resident permits

72. (1) Where a removal order is made against a permanent resident, other than a person with respect to whom a report referred to in subsection 40(1) has been made, or against a person lawfully in possession of a valid returning resident permit issued to him pursuant to the regulations, that person may appeal to the Board on either or both of the following grounds, namely,

(*a*) on any ground of appeal that involves a question of law or fact, or mixed law and fact; and

(*b*) on the ground that, having regard to all the circumstances of the case, the person should not be removed from Canada.

Appel des résidents permanents et des titulaires de permis de retour

72. (1) Toute personne frappée par une ordonnance de renvoi qui est soit un résident permanent, autre qu'une personne ayant fait l'objet du rapport visé au paragraphe 40(1), soit un titulaire de permis de retour valable et émis conformément aux règlements, peut interjeter appel à la Commission en invoquant l'un ou les deux motifs suivants:

a) un moyen d'appel comportant une question de droit ou de fait ou une question mixte de droit et de fait;

b) le fait que, compte tenu des circonstances de l'espèce, elle ne devrait pas être renvoyée du Canada.

Appeals by Convention refugees and persons with visas

(2) Where a removal order is made against a person who

Appel des réfugiés au sens de la Convention et des titulaires de visas

(2) Toute personne, frappée par une ordonnance de renvoi, qui

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*a*) has been determined by the Minister or the Board to be a Convention refugee but is not a permanent resident, or

(*b*) seeks admission and at the time that a report with respect to him was made by an immigration officer pursuant to subsection 20(1) was in possession of a valid visa,

that person may, subject to subsection (3), appeal to the Board on either or both of the following grounds, namely,

(*c*) on any ground of appeal that involves a question of law or fact, or mixed law and fact, and

(*d*) on the ground that, having regard to the existence of compassionate or humanitarian considerations, the person should not be removed from Canada.

a) n'est pas un résident permanent mais dont le statut de réfugié au sens de la Convention a été reconnu par le Ministre ou par la Commission, ou

b) demande l'admission et était titulaire d'un visa en cours de validité lorsqu'elle a fait l'objet du rapport visé au paragraphe 20(1),

peut, sous réserve du paragraphe (3), interjeter appel à la Commission en invoquant l'un ou les deux motifs suivants:

c) un moyen d'appel comportant une question de droit ou de fait ou une question mixte de droit et de fait;

d) le fait que, compte tenu de considérations humanitaires ou de compassion, elle ne devrait pas être renvoyée du Canada.

Where limited right of appeal

(3) Where a deportation order is made against a person described in paragraph (2)(*a*) or (*b*) who

(*a*) is a person with respect to whom a certificate referred to in subsection 39(1) has been filed, or

(*b*) has been determined by an adjudicator to be a member of an inadmissible class described in paragraph 19(1)(*e*), (*f*) or (*g*),

that person may appeal to the Board on any ground of appeal that involves a question of law or fact, or mixed law and fact.

Limitation au droit d'appel

(3) Lorsqu'une personne, visée aux alinéas (2)*a*) ou *b*), est frappée d'une ordonnance d'expulsion et

a) a fait l'objet d'une attestation visée au paragraphe 39(1), ou

b) appartient, selon la décision d'un arbitre, à une catégorie non admissible visée aux alinéas 19(1)*e*), *f*) ou *g*),

elle ne peut interjeter appel à la Commission qu'en se fondant sur un motif d'appel comportant une question de droit ou de fait ou une question mixte de droit et de fait.

Appeal by Minister

73. The Minister may appeal to the Board on any ground of appeal that involves a question of law or fact, or mixed law and fact, from a decision by an adjudicator that a person who was the subject of an inquiry is a person who may be granted admission or is not a person against whom a removal order should be made.

Appel par le Ministre

73. Le Ministre peut interjeter appel à la Commission de toute décision par laquelle un arbitre déclare qu'une personne qui a fait l'objet d'une enquête peut obtenir l'admission ou n'est pas susceptible de renvoi. Il doit invoquer un motif d'appel comportant une question de droit ou de fait ou une question mixte de droit et de fait.

Reopening of inquiry and additional evidence

74. The Board may order that an inquiry that has given rise to an appeal be reopened before the adjudicator who presided at the inquiry or some other adjudicator for the receiving of any additional evidence or testimony, and the adjudicator who presides at the reopened inquiry shall file a copy of the minutes of the reopened inquiry, together with his assessment of such additional evidence or testimony, with the Board for its consideration in disposing of the appeal.

Réouverture d'enquête et preuves supplémentaires

74. La Commission peut ordonner la réouverture d'une enquête qui a donné lieu à un appel, par l'arbitre qui en était chargé ou par un autre arbitre à l'effet de recueillir des preuves ou des témoignages supplémentaires. L'arbitre chargé de mener l'enquête ainsi réouverte doit remettre à la Commission, pour lui permettre de statuer sur l'appel, une copie du procès verbal de l'enquête réouverte accompagnée de son appréciation des preuves ou témoignages supplémentaires.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Disposition of appeal

75. (1) The Board may dispose of an appeal made pursuant to section 72

(*a*) by allowing it;

(*b*) by dismissing it; or

(*c*) in the case of an appeal pursuant to paragraph 72(1)(*b*) or 72(2)(*d*), by directing that execution of the removal order be stayed.

Décision en matière d'appel

75. (1) La Commission statuant sur un appel visé à l'article 72, peut

a) l'accueillir;

b) le rejeter; ou

c) ordonner de surseoir à l'exécution de l'ordonnance de renvoi en cas d'appel fondé sur les alinéas 72(1)*b*) ou 72(2)*d*).

Idem

(2) The Board may dispose of an appeal made pursuant to section 73

(*a*) by allowing it and making the removal order that the adjudicator who was presiding at the inquiry should have made; or

(*b*) by dismissing it.

Idem

(2) La Commission statuant sur un appel visé à l'article 73 peut

a) l'accueillir et prononcer l'ordonnance de renvoi que l'arbitre chargé de l'enquête aurait dû rendre; ou

b) le rejeter.

Deemed appeal in certain cases where appeal allowed

(3) Where the Board disposes of an appeal made pursuant to section 73 by allowing it and making a removal order against the person, that person shall, where he would have had an appeal pursuant to this Act if such order had been made by an adjudicator after an inquiry, be deemed to have made an appeal to the Board pursuant to paragraph 72(1)(*b*) or 72(2)(*d*), as the case may be.

Appel présumé dans certains cas

(3) Lorsque la Commission accueille un appel visé à l'article 73 et prononce une ordonnance de renvoi, la personne visée, au cas où la présente loi lui accorderait le droit d'appel si l'ordonnance avait été rendue par un arbitre après enquête, sera réputée avoir interjeté un appel fondé sur les alinéas 72(1)*b*) ou 72(2)*d*), selon le cas.

Where appeal allowed

76. (1) Where the Board allows an appeal made pursuant to section 72, it shall quash the removal order that was made against the appellant and may

(*a*) make any other removal order that the adjudicator who was presiding at the inquiry should have made; or

(*b*) in the case of an appellant other than a permanent resident, direct that he be examined as a person seeking admission at a port of entry.

Cas où l'appel est accueilli

76. (1) La Commission, en accueillant un appel visé à l'article 72, doit annuler l'ordonnance de renvoi et peut

a) prononcer toute autre ordonnance de renvoi que l'arbitre chargé de l'enquête aurait dû rendre; ou

b) ordonner, sauf s'il s'agit d'un résident permanent, que l'appelant soit examiné comme s'il demandait l'admission à un point d'entrée.

Terms of stay of execution

(2) Where the Board disposes of an appeal by directing that execution of a removal order be stayed, the person concerned shall be allowed to come into or remain in Canada under such terms and conditions as the Board may determine and the Board shall review the case from time to time as it considers necessary or advisable.

Conditions dont est assorti le sursis d'exécution

(2) Lorsque la Commission, en statuant sur un appel, ordonne de surseoir à l'exécution de l'ordonnance de renvoi, la personne concernée doit être autorisée à entrer ou à demeurer au Canada aux conditions que fixe la Commission. Celle-ci procédera à une révision de l'affaire chaque fois qu'elle juge opportun de le faire.

Board may amend terms or cancel direction

(3) Where the Board has disposed of an appeal by directing that execution of a removal order be stayed, it may, at any time,

(*a*) amend any terms and conditions imposed under subsection (2) or impose new terms and conditions; or

Modification des conditions et annulation de décision

(3) Lorsque la Commission a statué sur un appel en ordonnant de surseoir à l'exécution de l'ordonnance de renvoi, elle peut, à tout moment,

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*b*) cancel its direction staying the execution of a removal order and

(i) dismiss the appeal and direct that the order be executed as soon as reasonably practicable, or

(ii) allow the appeal and take any other action that it might have taken pursuant to subsection (1).

a) modifier les conditions imposées en vertu du paragraphe (2) ou en imposer de nouvelles; ou

b) annuler sa décision de surseoir à l'exécution de l'ordonnance de renvoi, et

(i) rejeter l'appel et ordonner que l'ordonnance soit exécutée dès que les circonstances le permettent, ou

(ii) accueillir l'appel et prendre toute autre mesure visée au paragraphe (1).

Return to Canada for hearing of appeal

77. Where a person against whom a removal order has been made is removed from or otherwise leaves Canada and informs the Board in writing of his desire to appear in person before the Board on the hearing of his appeal against the removal order, the Board may, if an appeal has been made, allow him to return to Canada for that purpose under such terms and conditions as it may determine.

Retour au Canada aux fins d'appel

77. La Commission peut, lorsqu'une personne ayant quitté le Canada par suite d'une ordonnance de renvoi l'avise par écrit de son désir de se présenter à l'audition de son appel relatif à ladite ordonnance, l'autoriser, à cette fin, à revenir au Canada aux conditions qu'elle fixe.

Appeal declared abandoned

78. Where a person against whom a removal order has been made files an appeal against that order with the Board but fails to communicate with the Board upon being requested to do so or fails to inform the Board of his most recent address, the Board may declare his appeal to be abandoned.

Renonciation à l'appel

78. Lorsqu'une personne, ayant interjeté appel, auprès de la Commission, d'une ordonnance de renvoi dont elle faisait l'objet, néglige d'entrer en communication avec la Commission après y avoir été invitée ou d'informer cette dernière de son adresse la plus récente, la Commission peut déclarer que cette personne a renoncé à son appel.

Appeals by Sponsors

Appels interjetés par les répondants

Where sponsored applications for landing may be refused

79. (1) Where a person has sponsored an application for landing made by a member of the family class, an immigration officer or visa officer, as the case may be, may refuse to approve the application on the grounds that

(*a*) the person who sponsored the application does not meet the requirements of the regulations respecting persons who sponsor applications for landing, or

(*b*) the member of the family class does not meet the requirements of this Act or the regulations,

and the person who sponsored the application shall be informed of the reasons for the refusal.

Rejet des demandes de droit d'établissement qui sont parrainées

79. (1) Un agent d'immigration ou un agent des visas peut rejeter une demande parrainée de droit d'établissement présentée par une personne appartenant à la catégorie de la famille, au motif que

a) le répondant ne satisfait pas aux exigences des règlements relatifs aux répondants, ou

b) la personne appartenant à la catégorie de la famille ne satisfait pas aux exigences de la présente loi ou des règlements.

Le répondant doit alors être informé des motifs du rejet.

Appeals by Canadian sponsors

(2) A Canadian citizen who has sponsored an application for landing that is refused

(2) Au cas de rejet, en vertu du paragraphe (1), d'une demande de droit d'établisse-

Appel interjeté par un répondant canadien

POOR COPY
COPIE DE QUALITEE INFERIEURE

pursuant to subsection (1) may appeal to the Board on either or both of the following grounds, namely,

(*a*) on any ground of appeal that involves a question of law or fact, or mixed law and fact; and

(*b*) on the ground that there exist compassionate or humanitarian considerations that warrant the granting of special relief.

ment parrainée par un citoyen canadien, celui-ci peut interjeter appel à la Commission en invoquant l'un ou les deux motifs suivants:

a) un moyen d'appel comportant une question de droit ou de fait ou une question mixte de droit et de fait;

b) le fait que des considérations humanitaires ou de compassion justifient l'octroi d'une mesure spéciale.

Disposition by Board

(3) The Board may dispose of an appeal made pursuant to subsection (2) by allowing it or by dismissing it, and shall notify the Minister and the person who made the appeal of its decision and the reasons therefor.

Décision de la Commission

(3) La Commission, en statuant sur un appel visé au paragraphe (2), peut l'accueillir ou le rejeter. Elle doit notifier la décision ainsi que les motifs au Ministre et à l'appelant.

Where appeal allowed

(4) Where the Minister has been notified by the Board that an appeal has been allowed pursuant to subsection (3), he shall cause the review of the application to be resumed by an immigration officer or visa officer, as the case may be, and the application shall be approved where it is determined that the person who sponsored the application and the member of the family class meet the requirements of this Act and the regulations, other than those requirements upon which the decision of the Board has been given.

Cas où l'appel est accueilli

(4) Le Ministre, avisé que l'appel a été accueilli en vertu du paragraphe (3), doit faire poursuivre l'examen de la demande par un agent d'immigration ou un agent des visas. Cette demande sera accueillie s'il est établi que le répondant et la personne appartenant à la catégorie de la famille satisfont aux exigences de la présente loi et des règlements, autres que celles qui ont fait l'objet de la décision de la Commission.

Release Pending Hearing

Mise en liberté en attendant l'audition

Order of release

80. (1) A person who is being detained under this Act pending the hearing and disposition of an appeal made pursuant to this Act may apply to the Board for his release and the Board may order his release, except where the person is a person with respect to whom a certificate referred to in subsection 39(1) has been filed.

Mise en liberté

80. (1) Une personne, détenue en vertu de la présente loi en attendant l'audition et la décision relatives à l'appel qu'elle a interjeté en vertu de la même loi, peut demander sa mise en liberté à la Commission. Celle-ci peut ordonner la mise en liberté sauf s'il s'agit d'une personne ayant fait l'objet d'une attestation visée au paragraphe 39(1).

Terms and conditions

(2) Where the Board orders the release of any person pursuant to subsection (1), it may impose such terms and conditions as it deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond.

Conditions

(2) La Commission peut assortir la mise en liberté visée au paragraphe (1) des conditions qu'elle juge appropriées eu égard aux circonstances, notamment du dépôt d'un gage ou d'un bon de garantie d'exécution.

Where assistance to be given by a senior immigration officer

(3) Where the Board orders the release of any person pursuant to subsection (1), it may direct a senior immigration officer to receive payment of any security deposit or to receive

Aide apportée par un agent d'immigration supérieur

(3) En cas de mise en liberté prévue au paragraphe (1), la Commission peut désigner un agent d'immigration supérieur pour recevoir le gage ou le bon de garantie d'exécution

POOR COPY
COPIE DE QUALITEE INFERIEURE

any performance bond required by the Board and to otherwise assist the Board in any matter relating to the release of the person.

Cancellation of order, etc.

(4) The Board may, at any time,

(*a*) cancel an order of release made pursuant to subsection (1) and direct that the person concerned be returned to custody; or

(*b*) vary or cancel any terms and conditions imposed by the Board.

et pour l'aider dans toute question relative à la mise en liberté.

Annulation de l'ordonnance, etc.

(4) La Commission peut, à tout moment,

a) annuler une ordonnance de mise en liberté visée au paragraphe (1) et ordonner que la personne concernée soit remise sous garde; ou

b) modifier ou annuler les conditions qu'elle a imposées.

Notice and Hearing

Avis d'appel et audition

Notice of appeal

81. A person who proposes to appeal to the Board shall give notice of the appeal in such manner and within such time as is prescribed by the rules of the Board.

Avis d'appel

81. La personne qui désire interjeter appel à la Commission doit donner avis de cet appel dans la forme et le délai prescrits par les règles de la Commission.

Hearing of appeal

82. An appeal to the Board shall be heard in public but if any party thereto so requests the Board may in its discretion direct that the appeal be heard *in camera*.

Audition de l'appel

82. L'appel est entendu en audience publique; cependant, à la requête d'une partie, la Commission peut ordonner le huis clos.

Security

Sécurité

Certificate of Minister and Soliciter General

83. (1) Notwithstanding anything in this Act, the Board shall dismiss any appeal made or deemed by subsection 75(3) to have been made pursuant to paragraph 72(1)(*b*) or 72(2)(*d*) or pursuant to section 79 if a certificate signed by the Minister and the Solicitor General is filed with the Board stating that, in their opinion, based on security or criminal intelligence reports received and considered by them, it would be contrary to the national interest for the Board to do otherwise.

Attestation du Ministre et du solliciteur général

83. (1) Par dérogation à toute autre disposition de la présente loi, la Commission doit rejeter tout appel fondé ou considéré comme tel en vertu du paragraphe 75(3), sur les alinéas 72(1)*b*) ou 72(2)*d*), ainsi que tout appel visé à l'article 79, au cas où le Ministre et le solliciteur général déclarent, dans une attestation portant leur signature et remise à la Commission, qu'à la lumière des rapports secrets qu'ils détiennent en matière de sécurité ou de criminalité, ils estiment que toute autre décision de la Commission irait à l'encontre de l'intérêt national.

Evidence

(2) A certificate purporting to be signed by the Minister and the Solicitor General pursuant to subsection (1) is proof of the matters stated therein and shall be received by the Board without proof of the signatures or official character of the persons appearing to have signed it unless called into question by the Minister or the Solicitor General.

Preuve

(2) Lorsqu'elle est apparemment signée par le Ministre et le solliciteur général, conformément au paragraphe (1), l'attestation fait foi de son contenu devant la Commission, l'authenticité des signatures et le caractère officiel des signataires ne pouvant être contestés que par le Ministre ou par le solliciteur général.

Appeals to the Federal Court of Appeal

Appel à la Cour d'appel fédérale

Appeal to Federal Court of Appeal

84. An appeal lies to the Federal Court of Appeal on any question of law, including a question of jurisdiction, from a decision of

Appel à la Cour d'appel fédérale

84. La décision de la Commission relativement à un appel interjeté en vertu de la présente loi est susceptible d'appel à la Cour

POOR COPY
COPIE DE QUALITEE INFERIEURE

the Board on an appeal under this Act if leave to appeal is granted by that Court based on an application for leave to appeal filed with that Court within fifteen days after the decision appealed from is pronounced or within such extended time as a judge of that Court may, for special reasons, allow.

d'appel fédérale sur toute question de droit, y compris de compétence, dans la mesure où ladite Cour accorde l'autorisation d'appel, sur demande déposée dans un délai de quinze jours du prononcé de la décision sujette à appel; ce délai peut, pour des raisons spéciales, être prorogé par un juge de ladite Cour.

Costs where Minister appeals

85. (1) When an application for leave to appeal or an appeal is made by the Minister from a decision of the Board on an appeal under this Act, the Federal Court of Appeal shall direct that all costs of and incident to the application for leave to appeal or the appeal, as the case may be, determined by that Court on a solicitor and client basis, be paid by Her Majesty.

Dépens

85. (1) Lorsque le Ministre demande l'autorisation d'appel ou interjette appel d'une décision de la Commission statuant sur un appel en vertu de la présente loi, la Cour d'appel fédérale doit ordonner que la totalité des dépens et des frais accessoires, y compris les frais extra-judiciaires qu'elle détermine, soit payée par Sa Majesté.

Costs where Minister does not appeal

(2) Except as provided in subsection (1), no order as to costs shall be made in respect of an application for leave to appeal or an appeal to the Federal Court of Appeal pursuant to this section.

Idem

(2) Sous réserve du paragraphe (1), il ne peut être rendu aucune ordonnance relative aux dépens en matière de demande d'autorisation d'appel ou d'appel interjeté à la Cour d'appel fédérale en vertu du présent article.

PART V

OBLIGATIONS OF TRANSPORTATION COMPANIES

PARTIE V

OBLIGATIONS DES TRANSPORTEURS

General liability for removal

86. (1) Subject to subsection (2), where a person

(*a*) is allowed to leave Canada pursuant to subsection 20(1) or 23(3), or

(*b*) is required to leave Canada by reason of

(i) the making of a rejection order,

(ii) the making of a direction to return to the United States pursuant to subsection 20(2) or 23(4), or

(iii) the making of a removal order,

the transportation company that brought him to Canada shall convey him or cause him to be conveyed,

(*c*) in the case of a person referred to in paragraph (*a*) or subparagraph (*b*)(i), to the place from which he came to Canada or to such other place as may be approved by the Minister at the request of the transportation company,

Responsabilité en matière de renvoi

86. (1) Sous réserve du paragraphe (2), le transporteur qui a amené au Canada une personne

a) qui est autorisée à quitter le Canada en vertu des paragraphes 20(1) ou 23(3), ou

b) qui doit quitter le Canada par suite

(i) d'une ordonnance de refoulement,

(ii) d'une directive l'enjoignant à retourner aux États-Unis en vertu des paragraphes 20(2) ou 23(4), ou

(iii) d'une ordonnance de renvoi,

doit la transporter ou la faire transporter

c) au lieu d'où elle est venue au Canada ou à tout autre lieu approuvé par le Ministre à la demande du transporteur, s'il s'agit d'une personne visée à l'alinéa *a*) ou au sous-alinéa *b*)(i),

d) aux États-Unis, s'il s'agit d'une personne visée au sous-alinéa *b*)(ii), ou

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*d*) in the case of a person referred to in subparagraph (*b*)(ii), to the United States, and

(*e*) in the case of a person referred to in subparagraph (*b*)(iii), to such country as is determined pursuant to subsection 54(2) or (3).

e) au pays désigné conformément aux paragraphes 54(2) ou (3), s'il s'agit d'une personne visée au sous-alinéa *b*)(iii).

Liability where U.S.A. refuses to allow return

(2) Where a person referred to in subsection (1) has come to Canada through the United States and that country refuses to allow him to return or to be returned to it, the transportation company that brought him to the United States shall convey him or cause him to be conveyed

(*a*) in the case of a person referred to in paragraph (1)(*a*) or subparagraph (1)(*b*)(i) or (ii), to the place from which he came to the United States or to such other place as may be approved by the Minister at the request of the transportation company; and

(*b*) in the case of a person referred to in subparagraph (1)(*b*)(iii), to such country other than the United States as is determined pursuant to subsection 54(2) or (3).

Responsabilité au cas où les États-Unis refusent de recevoir la personne

(2) Au cas où les États-Unis refusent de recevoir une personne entrée au Canada via les États-Unis et visée au paragraphe (1), le transporteur qui l'a amenée aux États-Unis doit la transporter ou la faire transporter

a) au lieu d'où elle est venue aux États-Unis ou à tout autre lieu approuvé par le Ministre à la demande du transporteur, s'il s'agit d'une personne visée à l'alinéa (1)*a*) ou aux sous-alinéas (1)*b*)(i) ou (ii); ou

b) à tout pays autre que les États-Unis, désigné conformément aux paragraphes 54(2) ou (3), s'il s'agit d'une personne visée au sous-alinéa (1)*b*)(iii).

Costs of removal and detention

87. (1) Where, pursuant to section 86, a transportation company is required to convey or cause to be conveyed any person who has not been granted admission, it is liable to pay all removal and detention costs of the person unless the person at the time of his arrival in Canada was in possession of a valid and subsisting visa.

Frais de renvoi et de détention

87. (1) Le transporteur requis, en vertu de l'article 86, de transporter ou de faire transporter une personne qui n'a pas obtenu l'admission, est tenu de payer tous ses frais de renvoi et de détention, à moins qu'elle ne soit arrivée au Canada en possession d'un visa en cours de validité.

Detention costs before admission

(2) Where any person who is held in detention for an examination or inquiry under this Act is subsequently granted admission, the transportation company that brought him to Canada is liable to pay all detention costs of the person unless the person at the time of his arrival in Canada was in possession of a valid and subsisting visa.

Frais de détention avant admission

(2) Au cas où une personne, détenue aux fins d'examen ou d'enquête en vertu de la présente loi, obtient l'admission par la suite, le transporteur qui l'a amenée au Canada est tenu de payer tous ses frais de détention, à moins qu'elle ne soit arrivée au Canada en possession d'un visa en cours de validité.

Removal and detention after admission to Canada

(3) A transportation company is not liable to pay the removal or detention costs of any person who

(*a*) is ordered removed from Canada, or

(*b*) is detained

after he has been granted admission unless the person is a person referred to in section

Renvoi et détention après obtention de l'admission

(3) Le transporteur n'est pas tenu de payer les frais de renvoi ni de détention d'une personne qui, après avoir obtenu l'admission, est

a) renvoyée du Canada, ou

b) détenue,

POOR COPY
COPIE DE QUALITEE INFERIEURE

88 or a person who came into Canada as a member of a crew and, without the approval of an immigration officer, failed to be on the vehicle when it left a port of entry.

sauf s'il s'agit de la situation visée à l'article 88 ou d'une personne entrée au Canada à titre de membre d'équipage et qui, sans l'autorisation d'un agent d'immigration, a négligé de regagner son véhicule lors de son départ d'un point d'entrée.

Transportation of persons ordered removed

88. Where, pursuant to section 86, a transportation company is required to convey or cause to be conveyed from Canada any person, it shall be notified thereof and given an opportunity of conveying him or causing him to be conveyed on one of its own vehicles or otherwise, but, where the transportation company, after being notified, is not prompt in furnishing transportation, the Minister may direct that arrangements be made for the removal from Canada of that person by another transportation company at the expense of Her Majesty and the obligated transportation company is liable, on demand, to reimburse Her Majesty for all removal and detention costs with respect to that person.

Transport des personnes renvoyées

88. Le transporteur doit être avisé lorsqu'en vertu de l'article 86, il est requis de transporter ou de faire transporter une personne; il doit avoir la possibilité de le faire avec ses propres véhicules ou autrement. Lorsque le transporteur, après avoir été avisé, ne fait aucune diligence à cet effet, le Ministre peut ordonner que des mesures soient prises pour que le transport de ladite personne soit effectué, aux frais de Sa Majesté, par un autre transporteur, auquel cas le transporteur à qui incombait le transport, est tenu de rembourser à Sa Majesté, dès qu'elle le réclame, les frais de détention et de transport.

Duties of transportation companies

89. Every transportation company that is required to convey any person who is ordered removed from Canada, is rejected from Canada or is allowed or required to leave Canada shall

(*a*) detain and guard safely the person concerned until he can be placed on board the vehicle on which he is to be conveyed;

(*b*) accept on board such vehicle, guard safely and convey the person in accordance with the removal or rejection order or other order or direction; and

(*c*) subject to any agreement between the transportation company and the person being conveyed respecting return fares, refrain from, directly or indirectly, making any charge or taking any remuneration or security in respect thereof.

Obligations des transporteurs

89. Tout transporteur requis de transporter une personne renvoyée ou refoulée du Canada ou qui est autorisée ou contrainte à partir, doit

a) détenir et garder sous surveillance la personne concernée jusqu'à ce qu'elle soit placée à bord du véhicule qui doit la transporter;

b) prendre à bord du véhicule, garder sous surveillance et transporter ladite personne conformément à l'ordonnance de renvoi, de refoulement, ou à toutes autres ordonnances ou instructions; et

c) s'abstenir, sous réserve d'un accord avec la personne transportée sur le prix du passage, de réclamer ou de prendre, directement ou indirectement, une rémunération ou garantie à cet égard.

Duty to present passengers for examination

90. (1) A transportation company bringing persons to Canada shall, upon the arrival of its vehicle in Canada, present each passenger seeking to come into Canada to an immigration officer for examination at such place as may be designated by a senior immigration officer and shall not allow any person to leave the vehicle

Obligation de présenter les passagers à l'examen

90. (1) Le transporteur qui amène des personnes au Canada doit, à l'arrivée de son véhicule au Canada, présenter chaque passager désireux d'entrer au Canada, à l'examen d'un agent d'immigration, au lieu désigné par un agent d'immigration supérieur. Il doit interdire à toute personne de quitter le véhicule

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*a*) at any place other than that designated by a senior immigration officer; or

(*b*) until permission has been granted by a senior immigration officer.

a) si ce n'est au lieu désigné par un agent d'immigration supérieur; ou

b) avant qu'un agent d'immigration supérieur n'en ait donné la permission.

Facilities may be required

(2) The Minister may require any transportation company to provide, equip and maintain free of charge to Her Majesty buildings, accommodation or other facilities for the proper examination and detention of persons brought to Canada or to be removed from Canada on the vehicles, bridges or tunnels of the company.

Installations requises

(2) Le Ministre peut exiger des transporteurs qu'ils fournissent, aménagent et entretiennent, sans frais pour Sa Majesté, des bâtiments, des locaux d'hébergement et autres installations convenables pour l'examen et la détention des personnes qu'ils ont amenées au Canada ou qu'ils doivent en ramener à bord de leurs véhicules ou en leur faisant emprunter leurs ponts ou tunnels.

Rights of immigration officers

91. (1) Immigration officers may board and inspect any vehicle bringing persons to Canada, examine any person carried by such vehicle, examine any record or document respecting any such person and seize and remove any such record or document for the purpose of obtaining copies thereof or extracts therefrom and may hold such vehicle until the inspection and examination are completed.

Pouvoirs des agents d'immigration

91. (1) Les agents d'immigration peuvent monter, aux fins d'inspection, à bord de tout véhicule amenant des personnes au Canada, examiner lesdites personnes ainsi que les registres et documents qui les concernent, et saisir ces registres et documents pour en tirer des photocopies ou des extraits. Ils peuvent détenir tout véhicule jusqu'à la fin de l'inspection et de l'examen.

Order to detain on vehicle

(2) An immigration officer may order the master of a vehicle to hold and detain on board the vehicle any person who arrived in Canada on that vehicle and who is not seeking to come into Canada.

Détention à bord d'un véhicule

(2) Un agent d'immigration peut enjoindre au responsable d'un véhicule de garder et de détenir à son bord toute personne arrivée au Canada à bord dudit véhicule et qui n'est pas désireuse d'y entrer.

Medical treatment

92. (1) Where a medical officer is of the opinion that a person seeking to come into Canada is or may be, either pending his admission or pending his leaving Canada where admission has not been granted, suffering from sickness or mental or physical disability or has been in contact with a contagious or infectious disease, a senior immigration officer or a medical officer may direct that the person be afforded medical treatment or held for observation and diagnosis on board the vehicle by which he was brought to Canada or at an immigrant station or be taken to a suitable hospital or other place for treatment, observation and diagnosis.

Traitement médical

92. (1) La personne désireuse d'entrer au Canada qui, de l'avis d'un médecin, est susceptible, en attendant d'obtenir l'admission ou de repartir si l'admission n'est pas accordée, d'être atteinte d'une maladie ou d'une incapacité mentale ou physique, ou qui a été en contact avec une maladie contagieuse ou infectieuse, peut, sur l'ordre d'un agent d'immigration supérieur ou d'un médecin, être soignée ou gardée en observation pour diagnostic à bord du véhicule qui l'a amenée au Canada ou à un poste d'attente, ou à un hôpital ou autre lieu appropriés à ces fins.

Costs of medical treatment, etc.

(2) Any costs of treatment, medical attention and maintenance incurred with respect to a person described in subsection (1) may be recovered from the transportation company that brought the person to Canada

Coût des soins médicaux

(2) Les soins médicaux et les frais d'entretien de la personne visée au paragraphe (1) peuvent être réclamés au transporteur qui l'a amenée au Canada, à moins qu'elle ne soit en possession d'un visa en cours de validité et

POOR COPY
COPIE DE QUALITEE INFERIEURE

unless that person is in possession of a valid and subsisting visa and the transportation company establishes to the satisfaction of the Deputy Minister that that person's condition is not a result of any negligence of the transportation company.

que le transporteur n'établisse à la satisfaction du sous-ministre que l'état de santé de ladite personne n'est dû à aucune négligence de sa part.

Costs of attendant accompanying sick person

(3) A senior immigration officer or a medical officer may, where he considers it advisable for the proper care of a person referred to in subsection (1), authorize that a member of the person's family or other suitable attendant be kept with him during his period of medical attention and treatment, including, where applicable, his journey to the port of entry from which he will leave Canada, and the costs thereof shall be paid by the transportation company that brought him to Canada where the transportation company is required to pay costs of treatment, medical attention and maintenance pursuant to subsection (2).

(3) Un agent d'immigration supérieur ou un médecin peut, s'il le juge opportun pour assurer des soins convenables à la personne visée au paragraphe (1), autoriser un membre de sa famille ou toute autre personne appropriée à rester auprès d'elle au cours du traitement médical et notamment, s'il y a lieu, durant son voyage au point d'entrée d'où elle doit repartir. Les frais afférents sont à la charge du transporteur qui a amené ladite personne au Canada au cas où il doit acquitter les frais médicaux et d'entretien en vertu du paragraphe (2).

Frais de la personne s'occupant du malade

Medical and hospital costs for crew members

(4) Where a person who is a member of the crew of a vehicle receives medical treatment or is hospitalized in Canada, the transportation company of whose vehicle that person is a member of the crew shall pay all costs incurred for such medical treatment or hospitalization including all costs incurred with respect to the departure from Canada of that person.

(4) Lorsqu'un membre de l'équipage d'un véhicule est soigné ou hospitalisé au Canada, le transporteur sur le véhicule duquel cette personne est membre d'équipage doit acquitter tous les frais médicaux ou hospitaliers ainsi engagés y compris les frais afférents au départ de cette personne du Canada.

Frais médicaux et hospitaliers des membres d'équipage

General security by transportation companies

93. (1) The Deputy Minister may issue a direction to any transportation company requiring it to deposit, in prescribed manner, such sum of money or other security as he deems necessary as a guarantee that the transportation company will pay all fines and other amounts for which the transportation company may become liable under this Act.

93. (1) Le sous-ministre peut adresser des instructions à tout transporteur l'obligeant à déposer, dans la forme prescrite, une somme d'argent ou tout autre gage qu'il estime approprié pour garantir le paiement des amendes et autres frais qui pourraient être mis à sa charge en vertu de la présente loi.

Gage à fournir par les transporteurs

Security for special purpose

(2) Where a vehicle owned or operated by a transportation company that has not deposited a sum of money or other security pursuant to a direction issued under subsection (1) comes into Canada, a senior immigration officer may issue a direction to the master of the vehicle or to the transportation company requiring the deposit of such sum of money or other security as he deems necessary as a guarantee that the transportation company will pay all fines and other amounts for which the transportation company may

(2) Un agent d'immigration supérieur peut adresser des instructions au responsable d'un véhicule ou au transporteur, qu'il soit propriétaire ou exploitant du véhicule, l'obligeant à déposer une somme d'argent ou autre gage qu'il estime approprié pour garantir le paiement, par le transporteur, des amendes et frais qui pourraient, du fait du véhicule, être mis à sa charge en vertu de la présente loi, et ce au cas où le transporteur n'aurait pas effectué de dépôt conformément aux instructions visées au paragraphe (1).

Gage à des fins spéciales

POOR COPY
COPIE DE QUALITEE INFERIEURE

become liable under this Act in respect of that vehicle.

Realization on security

(3) Where a transportation company becomes liable to pay any fine or other amount under this Act, the Minister may direct or authorize that such fine or other amount be deducted from any sum of money deposited in accordance with a direction issued pursuant to subsection (1) or (2) or that proceedings be taken to recover such fine or other amount out of any other security so deposited.

Réalisation des gages

(3) Le Ministre peut ordonner ou autoriser que le montant des amendes ou des autres frais mis à la charge d'un transporteur en vertu de la présente loi, soit déduit de la somme déposée conformément aux instructions visées aux paragraphes (1) ou (2), ou que des poursuites soient engagées pour en recouvrer le montant par la réalisation du gage.

Return where no longer required

(4) Any security deposited in accordance with a direction issued pursuant to subsection (1) or (2) may be returned or cancelled on a direction from the Deputy Minister or the senior immigration officer, as the case may be, that such security is no longer required.

Restitution du gage devenu sans objet

(4) Le sous-ministre ou l'agent d'immigration supérieur peut, par des instructions le déclarant sans objet, restituer ou annuler tout gage déposé conformément aux instructions visées aux paragraphes (1) ou (2).

Deduction from security in certain cases

94. (1) Where a transportation company, owner or master has, in the opinion of a senior immigration officer, failed to comply with any provision of this Part or any regulation made pursuant to paragraph 115(1)(*p*), (*s*), (*bb*), (*cc*), (*dd*), (*ee*), (*ff*) or (*gg*), the Minister, on giving written notice to the transportation company, may direct that there be deducted from any sum of money deposited in accordance with a direction issued pursuant to subsection 93(1) or (2) or that proceedings be taken to recover out of any other security so deposited an amount not exceeding the maximum amount that the transportation company, owner or master may be found liable to pay.

Déduction opérée sur les gages

94. (1) Au cas où un agent d'immigration supérieur estime qu'un transporteur, un propriétaire ou un responsable d'un véhicule, a contrevenu à la présente Partie ou à un règlement établi en vertu des alinéas 115(1)*p*), *s*), *bb*), *cc*), *dd*), *ee*), *ff*) ou *gg*), le Ministre peut ordonner, après avis écrit donné au transporteur, de déduire de la somme déposée conformément aux instructions visées aux paragraphes 93(1) ou (2), un montant ne dépassant pas le maximum qui pourra être mis à la charge du transporteur, du propriétaire ou du responsable d'un véhicule, ou d'engager des poursuites pour en recouvrer ledit montant par la réalisation de tout autre gage déposé.

Where objection to deduction

(2) Where a transportation company is given notice pursuant to subsection (1), it may, within ninety days after receiving the notice, file a notice of objection with the Minister after which the Minister shall

(*a*) rescind or vary any direction made by him pursuant to subsection (1) to meet the objection; or

(*b*) take such proceedings as are appropriate to determine whether or not the transportation company is liable to pay the amount that the Minister directed be deducted or recovered.

Opposition à la déduction

(2) Le transporteur, dans les quatre-vingt-dix jours de la réception de l'avis visé au paragraphe (1), peut remettre un avis d'opposition au Ministre qui doit alors

a) annuler ou modifier les instructions données en vertu du paragraphe (1) pour faire droit à l'opposition; ou

b) engager des poursuites en vue d'établir si le montant dont le Ministre a ordonné la déduction ou le recouvrement doit être mis à la charge du transporteur.

POOR COPY
COPIE DE QUALITEE INFERIEURE

PART VI

ENFORCEMENT

Offences and Punishment

Specific offences respecting immigration

95. Every person who

(*a*) comes into Canada at any place other than a port of entry and fails to report to an immigration officer for examination as required by subsection 12(1),

(*b*) comes into Canada or remains therein by use of a false or improperly obtained passport, visa or other document pertaining to his admission or by reason of any fraudulent or improper means or misrepresentation of any material fact,

(*c*) is or came into Canada to become a member of a crew and, without the approval of an immigration officer, failed to be on the vehicle when it left a port of entry,

(*d*) escapes or attempts to escape from lawful custody or detention under this Act,

(*e*) knowingly fails to comply with any term or condition subject to which he was released from detention pursuant to paragraph 23(3)(*b*), section 80 or subsection 104(3), (5) or (7),

(*f*) eludes examination or inquiry under this Act or, having received a summons issued by an adjudicator, fails, without valid excuse, to attend an inquiry or, where required by such summons, to produce any document, book or paper that he has in his possession or under his control relative to the subject-matter of the inquiry,

(*g*) refuses to be sworn or to affirm or declare, as the case may be, or to answer a question put to him at an examination or inquiry under this Act,

(*h*) knowingly makes any false or misleading statement at an examination or inquiry under this Act or in connection with the admission of any person or the application for admission by any person,

(*i*) knowingly makes a false promise of employment or any false representation by reason of which a person is induced to seek admission or is assisted in any attempt to

PARTIE VI

APPLICATION

Infractions et peines

Infractions spécifiques ayant trait à l'immigration

95. Toute personne

a) qui entre au Canada à un endroit autre qu'un point d'entrée et qui ne se présente pas devant un agent d'immigration pour l'examen visé au paragraphe 12(1),

b) qui entre au Canada ou y demeure soit sous le couvert d'un passeport, visa ou autre document relatif à son admission qui est faux ou obtenu irrégulièrement, soit par des moyens frauduleux ou irréguliers ou encore grâce à une représentation erronée d'un fait important,

c) qui se trouve au Canada à titre de membre d'équipage ou y est entré pour le devenir et qui a, sans l'autorisation d'un agent d'immigration, négligé de regagner le véhicule lors de son départ d'un point d'entrée,

d) qui, étant régulièrement en détention ou sous garde en vertu de la présente loi, s'évade ou fait une tentative d'évasion,

e) qui sciemment ne respecte pas des conditions imposées pour sa mise en liberté en vertu de l'alinéa 23(3)*b*), de l'article 80 ou des paragraphes 104(3), (5) ou (7),

f) qui se dérobe à un examen ou à une enquête prévus à la présente loi ou qui, ayant reçu de l'arbitre une citation à comparaître, néglige, sans excuse valable, d'assister à une enquête ou de produire les documents, livres ou papiers réclamés, relatifs à l'objet de l'enquête et qui se trouvent en sa possession ou sous sa responsabilité,

g) qui refuse de prêter serment ou de faire une affirmation ou déclaration solennelle, ou encore de répondre à une question posée au cours d'un examen ou d'une enquête prévu par la présente loi,

h) qui, de propos délibéré, fait une déclaration fausse ou trompeuse au cours d'un examen ou d'une enquête prévu à la présente loi, ou au sujet de l'admission d'une personne ou d'une demande d'admission par un tiers,

POOR COPY
COPIE DE QUALITEE INFERIEURE

seek admission or by reason of which his admission is procured,

(*j*) for the purpose of encouraging, inducing, deterring or preventing immigration into Canada, publishes, disseminates or causes or procures the publication or dissemination of any false or misleading information or representations as to the opportunities for employment in Canada or other false or misleading information or representations, knowing that the information or representations are false or misleading,

(*k*) remains in Canada without the written authority of an immigration officer after he ceases to be a visitor,

(*l*) knowingly contravenes any existing term or condition subject to which he was granted admission or contravenes any term or condition added or as varied pursuant to subsection 17(2), or

(*m*) knowingly induces, aids or abets or attempts to induce, aid or abet any person to contravene any provision of this Act or the regulations,

is guilty of an offence and is liable

(*n*) on conviction on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both, or

(*o*) on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

i) qui, de propos délibéré, fait une fausse promesse d'emploi ou une fausse déclaration, poussant ou aidant une personne à demander l'admission ou lui permettant de l'obtenir,

j) qui, en vue d'encourager, d'inciter, de décourager ou d'empêcher l'immigration au Canada, publie ou répand ou fait publier ou répandre des renseignements ou déclarations qu'elle sait faux ou trompeurs, notamment sur les possibilités d'emploi au Canada,

k) qui, n'ayant plus la qualité de visiteur, demeure au Canada sans l'autorisation écrite d'un agent d'immigration,

l) qui, de propos délibéré, ne respecte pas les conditions auxquelles elle a obtenu l'admission ou les conditions nouvelles ou modifiées qui lui ont été imposées en vertu du paragraphe 17(2), ou

m) qui, sciemment incite, aide ou encourage ou tente d'inciter, d'aider ou d'encourager une personne à enfreindre la présente loi ou les règlements,

commet une infraction et est passible,

n) sur déclaration de culpabilité par suite d'une procédure par voie d'acte d'accusation, d'une amende de cinq mille dollars au maximum ou d'un emprisonnement d'une durée maximale de deux ans ou des deux peines à la fois, ou

o) sur déclaration sommaire de culpabilité, d'une amende de mille dollars au maximum ou d'un emprisonnement d'une durée maximale de six mois, ou des deux peines à la fois.

Offence where return is without Minister's consent

96. Every person against whom a removal order is made who

(*a*) is removed from or leaves Canada, and

(*b*) comes into Canada contrary to subsection 57(1) or (2)

is guilty of an offence and is liable

(*c*) on conviction on indictment, to imprisonment for a term not exceeding two years, or

(*d*) on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

Infraction constituée par le retour sans l'autorisation du Ministre

96. Toute personne, frappée d'une ordonnance de renvoi,

a) qui quitte le Canada ou en est renvoyée, et

b) qui revient au Canada en violation des paragraphes 57(1) ou (2),

commet une infraction et est passible,

c) sur déclaration de culpabilité par suite d'une procédure par voie d'acte d'accusation, d'un emprisonnement d'une durée maximale de deux ans, ou

d) sur déclaration sommaire de culpabilité, d'une amende de mille dollars au maximum ou d'un emprisonnement d'une

POOR COPY
COPIE DE QUALITEE INFERIEURE

durée maximale de six mois, ou des deux peines à la fois.

Unauthorized employment of visitors and others

97. (1) Every person who knowingly engages in any employment any person, other than a Canadian citizen or permanent resident, who is not authorized under this Act to engage in that employment is guilty of an offence and is liable

(*a*) on conviction on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both; or

(*b*) on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

Recrutement illégal de visiteurs et d'autres personnes

97. (1) Quiconque engage une personne, autre qu'un citoyen canadien ou un résident permanent, en sachant que la présente loi ne l'autorise pas à prendre un tel emploi, commet une infraction et est passible,

a) sur déclaration de culpabilité par suite d'une procédure par voie d'acte d'accusation, d'une amende de cinq mille dollars au maximum ou d'un emprisonnement d'une durée maximale de deux ans ou des deux peines à la fois, ou

b) sur déclaration sommaire de culpabilité, d'une amende de mille dollars au maximum ou d'un emprisonnement d'une durée maximale de six mois ou des deux peines à la fois.

Deemed knowledge

(2) For the purposes of subsection (1), a person knowingly engages in any employment a person who is not authorized to engage in that employment where, by the exercise of reasonable diligence, he would have known that the person was not so authorized.

Présomption

(2) Aux fins du paragraphe (1), quiconque engage une personne non autorisée, sans exercer une diligence raisonnable pour connaître sa situation, est réputée savoir que cette personne n'était pas autorisée à prendre un tel emploi.

Identifiable special Social Insurance Number Cards

(3) The Minister may by order direct the Unemployment Insurance Commission established under the *Unemployment Insurance Act, 1971* to issue to persons, other than Canadian citizens or permanent residents, Social Insurance Number Cards whereby the holders thereof are identified as persons who may be required by or under this Act to obtain authorization to engage or continue in employment in Canada.

Numéro spécial d'assurance sociale

(3) Le Ministre peut, par ordre, enjoindre à la Commission d'assurance-chômage établie par la *Loi de 1971 sur l'assurance-chômage* de délivrer aux personnes, autres que les citoyens canadiens et les résidents permanents, des cartes portant un numéro d'assurance sociale indiquant que le titulaire peut être tenu, en application de la présente loi, d'obtenir une autorisation pour prendre ou conserver un emploi au Canada.

Offences respecting immigration officers and adjudicators

98. Every person who

(*a*) being an immigration officer or an adjudicator, wilfully makes or issues any false document or statement in respect of any matter relating to his duties under this Act or accepts, agrees to accept or induces or assists any other person to accept any bribe or other benefit in respect of any matter relating to his duties under this Act or otherwise wilfully fails to perform his duties under this Act,

(*b*) being an immigration officer or an adjudicator, contravenes any provision of this Act or the regulations or knowingly

Infractions relatives aux agents d'immigration et arbitres

98. Toute personne

a) qui, ayant la qualité d'agent d'immigration ou d'arbitre, établit ou délivre délibérément un document faux, fait à dessein une fausse déclaration dans une affaire entrant dans le cadre des fonctions que lui confère la présente loi, reçoit ou accepte de recevoir un pot-de-vin ou autre avantage dans le cadre d'une telle affaire ou encore incite ou encourage une personne à en accepter, ou manque délibérément aux obligations que lui impose la présente loi,

b) qui, ayant la qualité d'agent d'immigration ou d'arbitre, enfreint la présente

POOR COPY
COPIE DE QUALITEE INFERIEURE

induces, aids or abets or attempts to induce, aid or abet any other person to do so,

(*c*) gives, offers or promises to give any bribe or consideration of any kind to, or makes any agreement or arrangement with, an immigration officer or an adjudicator to induce him in any way not to perform his duties under this Act,

(*d*) not being an immigration officer or an adjudicator, personates or holds himself out to be an immigration officer or an adjudicator, or takes or uses any name, title, uniform or description or otherwise acts in any manner that may reasonably lead any person to believe that he is an immigration officer or an adjudicator, or

(*e*) obstructs or impedes an immigration officer or an adjudicator in the performance of his duties under this Act,

is guilty of an offence and is liable

(*f*) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both, or

(*g*) on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

loi ou les règlements, ou incite, aide ou encourage délibérément une autre personne à les enfreindre, ou fait des tentatives à cet effet,

c) qui donne, offre ou promet un pot-de-vin ou autre avantage quelconque à un agent d'immigration ou à un arbitre pour l'inciter de quelque manière à manquer aux obligations que la présente loi lui impose, ou conclut un accord ou un arrangement avec un tel fonctionnaire dans le même but,

d) qui se fait passer pour un agent d'immigration ou un arbitre ou adopte ou utilise un nom, un titre, un uniforme, des attributs ou une attitude susceptibles de faire accroire qu'elle est un agent d'immigration ou un arbitre, ou

e) qui gêne ou entrave l'action d'un agent d'immigration ou d'un arbitre dans l'exercice des fonctions que lui confère la présente loi,

commet une infraction et est passible,

f) sur déclaration de culpabilité par suite d'une procédure par voie d'acte d'accusation, d'une amende de dix mille dollars au maximum ou d'un emprisonnement d'une durée maximale de cinq ans, ou des deux peines à la fois, ou

g) sur déclaration sommaire de culpabilité, d'une amende de mille dollars au maximum ou d'un emprisonnement d'une durée maximale de six mois, ou des deux peines à la fois.

General punishment

99. Every person who knowingly contravenes any provision of this Act or the regulations or any order or direction lawfully made or given thereunder for which no punishment is elsewhere provided in this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

Répression des cas non spécialement prévus

99. Toute violation de la présente loi ou des règlements, ordonnances et directives régulièrement établis sous son empire, pour laquelle aucune peine n'est prévue dans la présente loi, constitue, lorsqu'elle est commise sciemment, une infraction punissable, sur déclaration sommaire de culpabilité, d'une amende de mille dollars au maximum ou d'un emprisonnement d'une durée maximale de six mois ou des deux peines à la fois.

Officers, etc., of corporations

100. (1) Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is

Dirigeants, etc., des corporations

100. (1) Lorsqu'une corporation a commis une infraction à la présente loi, les dirigeants, administrateurs ou mandataires de la corporation qui ont ordonné ou autorisé la commission de l'infraction, y ont consenti, acquiescé ou participé, sont parties à cette

POOR COPY
COPIE DE QUALITEE INFERIEURE

liable on conviction to the punishment provided for the offence whether or not the corporation is prosecuted or convicted therefor.

infraction, en sont coupables et sont passibles sur déclaration de culpabilité, de la peine applicable à cette infraction, que la corporation ait ou non été poursuivie ou déclarée coupable.

Offences by employees or agents

(2) In any prosecution for an offence under this Act it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

(2) Dans toute poursuite relative à une infraction à la présente loi, il suffit, pour établir l'infraction, de prouver qu'elle a été commise par un employé ou un mandataire de l'accusé, que l'employé ou le mandataire ait ou non été identifié ou poursuivi pour l'infraction, à moins que l'accusé ne prouve que l'infraction a été commise à son insu ou sans son consentement et qu'il avait pris toutes les mesures nécessaires pour en empêcher la perpétration.

Infractions commises par les employés ou mandataires

Offences outside Canada

101. Any act or omission that would by reason of this Act or the regulations be punishable as an offence if committed in Canada is, if committed outside Canada, an offence under this Act or the regulations and may be tried and punished in Canada.

101. L'auteur d'une infraction à la présente loi ou aux règlements, même commise à l'étranger, peut être jugé et condamné au Canada.

Infraction commise à l'étranger

Venue

102. (1) Any proceedings in respect of an offence under this Act may be instituted, tried and determined at the place in Canada where such offence was committed or at the place in Canada where the person charged with the offence is or has an office or place of business at the time of the institution of such proceedings.

102. (1) Les poursuites consécutives à une infraction à la présente loi peuvent être intentées, jugées et réglées au Canada, au lieu de commission de l'infraction ou à celui où, à la date de ces poursuites, l'inculpé se trouve ou bien a un bureau ou un établissement.

Lieu du procès

Where commission outside Canada

(2) Any proceedings in respect of an offence under this Act or the regulations that is committed outside Canada may be instituted, tried and determined at any place in Canada.

(2) Les poursuites consécutives à la commission d'une infraction à la présente loi ou aux règlements, commise à l'étranger, peuvent être intentées, jugées et réglées n'importe où au Canada.

Perpétration à l'étranger

Enforcement of bonds

103. (1) Where pursuant to any provision of this Act, other than section 93, a bond is required to be posted, the bond may be enforced in accordance with the terms thereof in the Federal Court for the face value of the bond which face value shall be deemed to be liquidated damages.

103. (1) Au cas où le dépôt d'un bon de garantie est exigé en vertu des dispositions de la présente loi, à l'exception de l'article 93, la réalisation des engagements du bon de garantie pourra être poursuivie à la Cour fédérale pour la valeur nominale du bon qui sera réputée être le montant liquidé des dommages.

Réalisation du bon de garantie

Disposition of fines

(2) All fines and forfeitures imposed or recovered under this Act belong to Her Majesty and form part of the Consolidated Revenue Fund.

(2) Les amendes perçues et sommes confisquées en vertu de la présente loi appartiennent à Sa Majesté et font partie du Fonds du revenu consolidé.

Affectation des amendes

POOR COPY
COPIE DE QUALITEE INFERIEURE

Arrest and Detention

Warrant for arrest

104. (1) The Deputy Minister or a senior immigration officer may on reasonable grounds issue a warrant for the arrest and detention of any person with respect to whom an examination or inquiry is to be held or a removal order has been made where, in his opinion, the person poses a danger to the public or would not otherwise appear for the examination or inquiry or for removal from Canada.

Arrest without warrant

(2) Every peace officer in Canada, whether appointed under the laws of Canada or of any province or municipality thereof, and every immigration officer may, without the issue of a warrant, an order or a direction for arrest or detention, arrest and detain or arrest and make an order to detain

(*a*) for an inquiry, any person who on reasonable grounds is suspected of being a person referred to in paragraph 27(2)(*b*), (*e*), (*f*), (*g*), (*h*), (*i*) or (*j*), or

(*b*) for removal from Canada, any person against whom a removal order has been made that is to be executed,

where, in his opinion, the person poses a danger to the public or would not otherwise appear for the inquiry or for removal from Canada.

Detention and release from detention by adjudicator

(3) Where an inquiry is to be held or is to be continued with respect to a person or a removal order has been made against a person, an adjudicator may make an order for

(*a*) the release from detention of the person, subject to such terms and conditions as he deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond;

(*b*) the detention of the person where, in his opinion, the person poses a danger to the public or would not otherwise appear for the inquiry or continuation thereof or for removal from Canada; or

Arrestation et détention

Mandat d'arrestation

104. (1) Le sous-ministre ou un agent d'immigration supérieur peut, en se fondant sur des motifs raisonnables, émettre un mandat d'arrestation et de détention visant toute personne qui doit faire l'objet d'un examen ou d'une enquête ou qui est frappée par une ordonnance de renvoi, lorsqu'il estime que ladite personne constitue une menace pour le public ou qu'à défaut de cette mesure, elle ne se présentera pas à l'examen ou à l'enquête, ou n'obtempérera pas à l'ordonnance de renvoi.

Arrestation sans mandat

(2) Tout agent de la paix au Canada, nommé en vertu d'une loi fédérale, provinciale ou d'un règlement municipal, et tout agent d'immigration peuvent, sans mandat, ordre ou directive à cet effet, arrêter et détenir ou arrêter et ordonner la détention

a) aux fins d'enquête, de toute personne soupçonnée, pour des motifs valables, de faire partie de l'une des catégories visées aux alinéas 27(2)*b*), *e*), *f*), *g*), *h*), *i*) ou *j*), ou

b) aux fins de renvoi du Canada, de toute personne frappée par une ordonnance de renvoi exécutoire,

au cas où ils estiment que ladite personne constitue une menace pour le public ou qu'à défaut de cette mesure, elle ne se présentera pas à l'enquête ou n'obtempérera pas à l'ordonnance de renvoi.

Détention et mise en liberté par un arbitre

(3) Au cas où une personne doit faire l'objet d'une enquête ou d'un complément d'enquête ou est frappée par une ordonnance de renvoi, un arbitre peut ordonner

a) sa mise en liberté, sous réserve des conditions qu'il juge appropriées aux circonstances et notamment du dépôt d'un gage ou d'un bon de garantie d'exécution;

b) sa détention s'il estime qu'elle constitue un danger pour le public ou qu'à défaut de cette mesure, elle ne se présentera pas à toutes les phases de l'enquête ou n'obtempérera pas à l'ordonnance de renvoi; ou

c) la fixation des conditions qu'il juge appropriées aux circonstances et notamment le dépôt d'un gage ou d'un bon de garantie d'exécution.

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*c*) the imposition of such terms and conditions as he deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond.

Notification of detention for examination or inquiry

(4) Where any person is detained for an examination or inquiry pursuant to this section, the person who detains or orders the detention of that person shall forthwith notify a senior immigration officer of the detention and the reasons therefor.

Avis de détention

(4) Celui qui a ordonné la détention d'une personne aux fins d'examen ou d'enquête en vertu du présent article, ou le gardien de ladite personne doit immédiatement aviser un agent d'immigration supérieur de la détention et de ses motifs.

Release from detention by senior immigration officer

(5) A senior immigration officer may, within forty-eight hours from the time when a person is placed in detention pursuant to this Act, order that the person be released from detention subject to such terms and conditions as he deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond.

Mise en liberté par un agent d'immigration supérieur

(5) Dans les quarante-huit heures de la mise en détention d'une personne en vertu de la présente loi, un agent d'immigration supérieur peut ordonner la mise en liberté de la personne détenue, sous réserve des conditions qu'il juge appropriées aux circonstances et notamment du dépôt d'un gage ou d'un bon de garantie d'exécution.

Review of decision for detention

(6) Where any person is detained pursuant to this Act for an examination, inquiry or removal and the examination, inquiry or removal does not take place within forty-eight hours from the time when such person is first placed in detention, that person shall be brought before an adjudicator forthwith and the reasons for his continued detention shall be reviewed and thereafter that person shall be brought before an adjudicator at least once during each seven day period, at which times the reasons for continued detention shall be reviewed.

Révision des motifs de la détention

(6) Au cas où l'examen, l'enquête ou le renvoi qui, en vertu de la présente loi, ont motivé la détention, n'ont pas lieu dans les quarante-huit heures de celle-ci, la personne détenue doit être immédiatement amenée devant un arbitre aux fins de révision des motifs justifiant une détention prolongée; par la suite, la personne devra être amenée devant un arbitre aux mêmes fins, au moins une fois tous les sept jours.

Release from detention by adjudicator

(7) Where an adjudicator who conducts a review pursuant to subsection (6) is not satisfied that the person in detention poses a danger to the public or would not appear for an examination, inquiry or removal, he shall order that such person be released from detention subject to such terms and conditions as he deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond.

Mise en liberté par l'arbitre

(7) L'arbitre chargé de la révision prévue au paragraphe (6) doit ordonner la mise en liberté de la personne détenue, au cas où il n'est pas convaincu qu'elle constitue une menace pour le public ni qu'elle se dérobera à l'examen, à l'enquête ou au renvoi, sous réserve des conditions qu'il juge appropriées aux circonstances et notamment du dépôt d'un gage ou d'un bon de garantie d'exécution.

Retake into custody

(8) Where an adjudicator has ordered that a person be released from detention pursuant to paragraph (3)(*a*) or subsection (7), that adjudicator or any other adjudicator may at any time thereafter order that the person be retaken into custody and held in detention if he becomes satisfied that the person poses a

Réitération de la mise sous garde

(8) Après qu'un arbitre ait prononcé la mise en liberté d'une personne conformément à l'alinéa (3)*a*) ou au paragraphe (7), cet arbitre ou tout autre arbitre peut à tout moment ordonner qu'elle soit à nouveau mise sous garde et en détention, au cas où il estime qu'elle constitue une menace pour le

POOR COPY
COPIE DE QUALITEE INFERIEURE

danger to the public or would not appear for an examination, inquiry or removal.

public ou qu'elle se dérobera à l'examen, l'enquête ou au renvoi.

Failure to comply

105. Where a person fails to comply with any of the terms or conditions subject to which he is released from detention under any provision of this Act, any security deposit that may have been made as a condition of his release may be declared forfeited by the Minister or the terms of any performance bond that may have been posted may be enforced, and the person may be retaken into custody forthwith and held in detention.

Non-respect des conditions

105. Le non-respect des conditions de la mise en liberté accordée en vertu de la présente loi, peut entraîner la confiscation par le Ministre du gage déposé, ou la réalisation des engagements du bon de garantie d'exécution. La personne en question peut immédiatement être mise de nouveau sous garde et en détention.

Where person in institution

106. Where a warrant has been issued or an order has been made pursuant to subsection 104(1) or (3) with respect to any person who has become an inmate of any institution pursuant to the order of any court or other body, the Deputy Minister may issue an order to the warden, governor or other person in charge thereof directing him, at the expiration of the sentence or term of confinement to which such person is subject or at the expiration of his sentence or term of confinement as reduced by the operation of any statute or other law or by an act of clemency, to detain such person and deliver him to an immigration officer to take into custody.

Cas d'une personne se trouvant dans une institution

106. En cas d'émission d'un mandat ou d'un ordre prévus aux paragraphes 104(1) ou (3), visant une personne qui se trouve détenue dans une institution en vertu d'une ordonnance d'une cour ou d'un autre organisme, le sous-ministre peut adresser au gardien, directeur, ou responsable de l'institution, une directive l'enjoignant de détenir ladite personne puis de la confier à un agent d'immigration aux fins de mise sous garde, à l'expiration de sa peine ou de sa détention, compte tenu des réductions de peine résultant d'une loi ou autre mesure statutaire ou d'une mesure de clémence.

Authority to execute warrants and orders

107. Any warrant issued or order made under paragraph 12(3)(*b*), subsection 20(1), paragraph 23(3)(*a*), subsection 91(2) or 104(1), (2), (3) or (8) or section 106 or any direction made under subsection 80(4) is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may receive and execute it to arrest and detain the person with respect to whom such warrant, order or direction was issued or made.

Pouvoir d'exécuter des mandats et ordres

107. Par dérogation à toute autre loi, tout mandat ou tout ordre prévus aux alinéas 12(3)*b*) ou 23(3)*a*), aux paragraphes 20(1), 91(2) ou 104(1), (2), (3) ou (8) ou à l'article 106, ainsi que toute directive prévue au paragraphe 80(4), confèrent à son destinataire ou à la personne qui le reçoit et l'exécute, le pouvoir d'arrêter et de détenir la personne qui y est visée.

Place of detention

108. Where a person is detained pursuant to this Act, he shall be detained at an immigrant station or other place satisfactory to the Deputy Minister.

Lieu de détention

108. Toute détention prévue à la présente loi a lieu dans un poste d'attente ou à tout autre endroit que le sous-ministre juge approprié.

POOR COPY
COPIE DE QUALITEE INFERIEURE

PART VII

GENERAL

Consultations and Agreements with Provinces

Consultations with provinces

109. (1) The Minister shall consult with the provinces respecting the measures to be undertaken to facilitate the adaptation of permanent residents to Canadian society and the pattern of immigrant settlement in Canada in relation to regional demographic requirements.

Federal-provincial agreements

(2) The Minister, with the approval of the Governor in Council, may enter into an agreement with any province or group of provinces for the purpose of facilitating the formulation, coordination and implementation of immigration policies and programs.

Immigration Officers

Appointment of immigration officers

110. (1) Immigration officers shall be appointed or employed under the *Public Service Employment Act*.

Designation of immigration officers

(2) Notwithstanding subsection (1), the Minister may designate any person or class of persons as immigration officers for the purposes of this Act and such person or class of persons shall have such of the powers, duties and functions of an immigration officer as are specified by the Minister.

Authority of immigration officers

111. (1) An immigration officer has the authority and powers of a peace officer to enforce any provision of this Act, the regulations or any warrant, order or direction made under this Act or the regulations respecting the arrest, detention or removal from Canada of any person.

Identification and seizure of documents

(2) An immigration officer may

(*a*) require persons who seek admission, persons who make an application pursuant to subsection 9(1), section 10 or subsection 16(1), persons who are arrested pursuant to section 104 and persons against whom a removal order has been made to comply with such regulations as are prescribed providing for the identification of such persons;

PARTIE VII

DISPOSITIONS GÉNÉRALES

Consultations et accords avec les provinces

Consultation avec les provinces

109. (1) Le Ministre doit consulter les provinces sur les mesures à prendre pour faciliter l'adaptation des résidents permanents à la société canadienne et sur la répartition au Canada des immigrants, compte tenu des besoins démographiques régionaux.

Accords entre le fédéral et les provinces

(2) Le Ministre, avec l'accord du gouverneur en conseil, peut conclure des accords avec les provinces en vue de formuler, de coordonner et de mettre en œuvre la politique et les programmes d'immigration.

Agents d'immigration

Nomination d'agents d'immigration

110. (1) Les agents d'immigration sont nommés conformément à la *Loi sur l'emploi dans la Fonction publique*.

Désignation comme agent d'immigration

(2) Par dérogation au paragraphe (1), le Ministre peut, aux fins de la présente loi, désigner toute personne ou catégorie de personnes comme agent d'immigration. Toute personne ainsi désignée exerce les pouvoirs et fonctions d'agent d'immigration qu'indique le Ministre.

Pouvoirs des agents d'immigration

111. (1) Tout agent d'immigration détient les pouvoirs et attributions d'un agent de la paix pour faire appliquer la présente loi et les règlements, ainsi que les mandats, ordres ou directives établis sous leur empire, visant l'arrestation, la détention et le renvoi du Canada.

Identification et saisie de documents

(2) L'agent d'immigration a le pouvoir

a) d'exiger des personnes qui demandent l'admission, de celles qui font une demande en vertu du paragraphe 9(1), de l'article 10 ou du paragraphe 16(1), de celles qui sont arrêtées en vertu de l'article 104 et de celles qui ont fait l'objet d'une ordonnance de renvoi, qu'elles se conforment aux règlements prescrivant leur identification;

b) de saisir et de détenir tous documents, notamment ceux de voyage, pouvant servir

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*b*) seize and hold any travel or other documents that may be used for the purpose of determining whether a person may be granted admission or may come into Canada where he has reasonable grounds to believe that such action is required to facilitate the carrying out of any provision of this Act or the regulations; and

(*c*) seize and hold any travel or other documents in the possession of any person in Canada if he has reasonable grounds to believe that such documents have been fraudulently or improperly obtained or used or that such action is necessary to prevent the fraudulent or improper use of such documents.

à déterminer si une personne peut obtenir l'admission ou entrer au Canada, au cas où il a de bonnes raisons de croire qu'une telle mesure s'impose pour faciliter l'application de la présente loi ou des règlements; et

c) de saisir et de détenir tous documents, notamment ceux de voyage, en possession d'une personne se trouvant au Canada, au cas où il a de bonnes raisons de croire qu'ils ont été obtenus ou utilisés irrégulièrement ou frauduleusement, ou bien au cas où une telle mesure s'impose pour en empêcher l'utilisation irrégulière ou frauduleuse.

Temporary assistants

(3) An immigration officer may, in cases of emergency, employ such temporary assistants as he deems necessary to enable him to carry out his duties under this Act and the regulations and such temporary assistants shall, during their employment, have the authority and powers referred to in subsection (1), but no such employment shall continue for a period exceeding forty-eight hours unless approved by the Minister.

(3) L'agent d'immigration peut, en cas d'urgence, s'adjoindre les assistants temporaires qu'il estime nécessaires pour lui permettre d'exercer les fonctions que lui confèrent la présente loi et les règlements. Ces assistants temporaires ne peuvent exercer les pouvoirs et attributions visés au paragraphe (1) pour plus de quarante-huit heures sans l'autorisation du Ministre.

Assistants temporaires

Oaths and evidence

112. Every immigration officer has the authority to administer oaths and to take and receive evidence under oath on any matter arising out of this Act.

112. Tout agent d'immigration a le pouvoir de faire prêter serment et de recevoir des témoignages sous serment dans toute affaire relevant de la présente loi.

Serments et preuves

Adjudicators

Les arbitres

Powers to examine witnesses, etc.

113. An adjudicator has all the powers and authority of a commissioner appointed under Part I of the *Inquiries Act* and, without restricting the generality of the foregoing, may, for the purposes of an inquiry,

(*a*) issue a summons to any person requiring him to appear at the time and place mentioned therein to testify with respect to all matters within his knowledge relative to the subject-matter of the inquiry and to bring with him and produce any document, book or paper that he has in his possession or under his control relative to the subject-matter of the inquiry;

(*b*) administer oaths and examine any person on oath;

(*c*) issue commissions or requests to take evidence in Canada;

113. Tout arbitre a les pouvoirs et attributions des commissaires nommés en vertu de la Partie I de la *Loi sur les enquêtes* et, aux fins d'enquête, peut notamment

a) adresser une citation à toute personne l'enjoignant à comparaître aux date et lieu indiqués pour témoigner sur toute question dont elle a connaissance, relative à l'objet de l'enquête, et à produire tout document, livre ou écrit en sa possession ou sous sa responsabilité, qui se rapporte à l'objet de l'enquête;

b) faire prêter serment et interroger sous serment;

c) délivrer des commissions ou requêtes en vue de recueillir des preuves au Canada;

d) retenir les services de conseil, d'interprètes, de techniciens, de commis, de sté-

Pouvoir d'interroger des témoins, etc.

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*d*) engage the services of such counsel, interpreters, technicians, clerks, stenographers and other persons as he deems necessary for a full and proper inquiry; and

(*e*) do all other things necessary to provide a full and proper inquiry.

nographes et du personnel qu'il estime nécessaires à la tenue d'une enquête approfondie;

e) faire tout ce qui est nécessaire à la tenue régulière d'enquêtes approfondies.

Peace Officers

Agents de la paix

Duties of peace officers to execute orders

114. Every peace officer and every person in immediate charge or control of an immigrant station shall, when so directed by the Deputy Minister, an adjudicator, a senior immigration officer or an immigration officer, receive and execute any written warrant or order issued or made under this Act or the regulations for the arrest, detention or removal from Canada of any person.

114. Tout agent de la paix et tout responsable immédiat d'un poste d'attente doivent, sur instruction du sous-ministre, d'un arbitre, d'un agent d'immigration supérieur, ou d'un agent d'immigration, recevoir et exécuter les mandats et ordres écrits d'arrestation, de détention ou de renvoi du Canada, émis en vertu de la présente loi ou des règlements.

Obligation pour les agents de la paix d'exécuter les ordres

Regulations

Règlements

Regulations

115. (1) The Governor in Council may make regulations

(*a*) providing for the establishment and application of selection standards based on such factors as family relationships, education, language, skill, occupational experience and other personal attributes and attainments, together with demographic considerations and labour market conditions in Canada, for the purpose of determining whether or not an immigrant will be able to become successfully established in Canada;

(*b*) prescribing classes of persons whose applications for landing may be sponsored by Canadian citizens and prescribing classes of persons whose applications for landing may be sponsored by permanent residents;

(*c*) exempting members of the family class from any of the requirements of the regulations and prescribing, in substitution for such regulations, special regulations for the purpose of determining the ability and willingness of persons who sponsor applications for landing to assist such members in becoming successfully established in Canada;

(*d*) designating classes of persons for the purposes of subsection 6(2);

115. (1) Le gouverneur en conseil peut établir des règlements

a) prévoyant l'établissement et l'application de normes de sélection, fondées sur des critères tels que la parenté, l'instruction, la langue, la compétence, l'expérience professionnelle et autres qualités et connaissances personnelles, et tenant compte des facteurs démographiques et de la situation du marché du travail au Canada, dans le but de déterminer si un immigrant pourra s'établir avec succès au Canada;

b) établissant les catégories de personnes dont la demande de droit d'établissement pourra être parrainée par des citoyens canadiens et celles dont la demande pourra l'être par des résidents permanents;

c) affranchissant les personnes appartenant à la catégorie de la famille des exigences réglementaires et prévoyant des règlements spéciaux aux fins d'apprécier la capacité et la volonté des répondants de les aider à s'établir avec succès au Canada;

d) désignant les catégories de personnes visées au paragraphe 6(2);

e) dispensant les réfugiés au sens de la Convention et les catégories de personnes visées à l'alinéa *d*) des exigences réglementaires et prévoyant des règlements spéciaux pour leur admission;

Règlements

POOR COPY
COPIE DE QUALITEE INFERIEURE

(*e*) exempting Convention refugees and classes of persons designated pursuant to paragraph (*d*) from any of the requirements of the regulations and prescribing, in substitution for such regulations, special regulations relating to the admission of Convention refugees and such classes of persons;

(*f*) prescribing a system of priorities for the processing of applications made by immigrants;

(*g*) prescribing universities, colleges and other institutions not described in paragraph 10(*a*) for the taking of any academic, professional or vocational training course at which visitors may not be granted entry and prescribing courses at any such university, college or other institution for the taking of which authorization may not be obtained under section 10;

(*h*) prescribing the circumstances in which a returning resident permit shall be issued to a permanent resident who makes an application therefor pursuant to subsection 25(1);

(*i*) specifying the documentation that may be required in respect of any class of visitors;

(*j*) prohibiting persons or classes of persons, other than Canadian citizens and permanent residents, from engaging or continuing in employment in Canada, specifying the type of employment in which such persons or classes of persons may engage or continue and placing restrictions upon such persons or classes of persons relating to their engaging or continuing in employment in Canada;

(*k*) requiring any person to deposit security with the Minister to guarantee the performance by that person of any obligation assumed by him with respect to the admission of any other person;

(*k*.1) where a person or organization seeks to facilitate the admission or arrival in Canada of a Convention refugee or a person who is a member of a class designated pursuant to paragraph (*d*) or where a person seeks to facilitate the admission of an immigrant who is related to him, establishing the requirements to be met by any such person or organization including the provision of an undertaking

f) prévoyant un système de priorités pour l'examen des demandes faites par des immigrants;

g) indiquant les universités, collèges et autres institutions non visés à l'alinéa 10*a*), dont les cours de formation théorique ou professionnelle ne permettront pas aux visiteurs qui les suivent d'obtenir l'autorisation de séjour et les cours desdites institutions pour lesquels l'autorisation ne sera pas accordée en vertu de l'article 10;

h) fixant les circonstances d'attribution d'un permis de retour aux résidents permanents qui en font la demande en vertu du paragraphe 25(1);

i) précisant les pièces qui peuvent être exigées d'une catégorie de visiteurs;

j) interdisant à certaines personnes ou à certaines catégories de personnes, à l'exception des citoyens canadiens et des résidents permanents, de prendre ou de conserver un emploi au Canada, indiquant le genre d'emploi qu'elles peuvent prendre ou conserver et leur imposant des restrictions à ce sujet;

k) exigeant d'une personne le versement d'un gage au Ministre pour garantir qu'elle exécutera les obligations qu'elle a assumées à l'occasion de l'admission d'un tiers;

k.1) fixant les exigences auxquelles doit satisfaire toute personne ou organisation cherchant à faciliter l'admission ou l'arrivée au Canada d'un réfugié au sens de la Convention ou d'une personne appartenant à une catégorie désignée en vertu de l'alinéa *d*), ou auxquelles doit satisfaire toute personne cherchant à faciliter l'admission d'un immigrant avec lequel elle a un lien de parenté, y compris l'obligation de fournir l'engagement d'aider ce réfugié, cette personne ou cet immigrant à s'établir avec succès au Canada;

l) indiquant les critères à retenir pour déterminer si une personne constitue ou est susceptible de constituer un danger pour la santé ou la sécurité publiques, ou bien si une personne, du fait de son admission, entraînerait ou pourrait vraisemblablement entraîner un fardeau excessif pour les services sociaux ou de santé;

m) prescrivant ou autorisant l'examen de personnes se trouvant à l'étranger pour déterminer si elles doivent être autorisées à

POOR COPY
COPIE DE QUALITEE INFERIEURE

to assist any such Convention refugee, person or immigrant in becoming successfully established in Canada;

(*l*) prescribing the factors to be considered in determining whether any person is or is likely to be a danger to public health or to public safety or whether the admission of any person would cause or might reasonably be expected to cause excessive demands on health or social services;

(*m*) requiring or authorizing the examination of persons outside Canada for the purpose of determining whether such persons shall be allowed to come into Canada or may be granted admission;

(*n*) requiring persons referred to in paragraph 111(2)(*a*) to provide photographs of themselves or to be fingerprinted or photographed or both;

(*o*) prescribing the costs and expenses to be included in determining removal and detention costs;

(*p*) requiring transportation companies to ensure, in prescribed circumstances, that immigrants and visitors being carried to Canada by them are in possession of valid visas where required;

(*q*) establishing the procedures to be followed at an inquiry and prescribing the circumstances in which an inquiry may be reopened pursuant to subsection 35(1) and the circumstances in which an inquiry that has been adjourned may be resumed by an adjudicator other than the adjudicator who presided at the adjourned inquiry;

(*r*) prescribing the manner in which a person who has been determined by the Minister not to be a Convention refugee may make an application to the Board for a redetermination;

(*s*) prohibiting transportation companies from knowingly carrying to Canada persons, other than Canadian citizens or permanent residents, who are, in the opinion of the Minister, members of any of the classes described in subsection 19(1);

(*t*) authorizing the Minister to make loans for any of the purposes referred to in subsection 121(1) and prescribing the rate of interest, if any, to be charged on such loans and the manner in which the terms

entrer au Canada ou si elles peuvent obtenir l'admission;

n) exigeant des personnes visées à l'alinéa 111(2)*a*) qu'elles fournissent leurs photos ou qu'elles se soumettent à la prise d'empreintes digitales et de photographie ou à l'une de ces formalités;

o) indiquant les frais et dépenses à retenir dans le calcul des frais de détention et de renvoi;

p) enjoignant aux transporteurs de s'assurer, dans les cas prescrits, que les immigrants et les visiteurs qu'ils amènent au Canada sont en possession d'un visa valable lorsque celui-ci est obligatoire;

q) établissant la procédure à suivre en matière d'enquête, indiquant les cas donnant lieu à réouverture d'enquête en vertu du paragraphe 35(1) et les cas où une enquête ajournée peut être reprise par un autre arbitre que celui qui l'a commencée;

r) établissant la procédure à suivre par une personne à qui le Ministre n'a pas reconnu le statut de réfugié au sens de la Convention, pour demander à la Commission le réexamen de son statut;

s) interdisant aux transporteurs d'effectuer sciemment le transport à destination du Canada de personnes, autres que des citoyens canadiens ou des résidents permanents, qui, de l'avis du Ministre, appartiennent à l'une des catégories visées au paragraphe 19(1);

t) autorisant le Ministre à consentir des prêts aux fins du paragraphe 121(1) et fixant le taux d'intérêt, s'il y a lieu, et les modalités de remboursement;

u) exigeant de toute personne, autre qu'un avocat inscrit au barreau d'une province, l'obtention, sur demande, d'une autorisation délivrée par les autorités visées aux règlements, pour comparaître devant un arbitre ou la Commission en qualité de conseil rétribué;

v) autorisant la délivrance de visas aux représentants de gouvernements étrangers et d'organisations internationales visés aux règlements et précisant les catégories de personnes qui peuvent délivrer ces visas;

w) établissant la procédure à suivre lors des examens;

POOR COPY
COPIE DE QUALITEE INFERIEURE

of repayment of such loans shall be determined;

(*u*) requiring any person, other than a person who is a member of the bar of any province, to make application for and obtain a licence from such authority as is prescribed before he may appear before an adjudicator or the Board as counsel in exchange for any fee, reward or other form of remuneration whatever;

(*v*) authorizing the issuance of visas to such representatives of foreign governments and international organizations as are prescribed and prescribing the classes of persons by whom such visas may be issued;

(*w*) establishing the procedures to be followed at examinations;

(*x*) prescribing the manner in which immigration officers shall carry out their duties and exercise their powers, whether in Canada or elsewhere;

(*y*) prescribing the manner in which an application may be made under subsection 15(2) or 16(1) and the information to be provided therewith;

(*z*) requiring any person or class of persons, other than a Canadian citizen, to be in possession of a valid and subsisting passport or other travel document;

(*aa*) providing for the return or other disposition of any travel or other document that has been seized and held pursuant to paragraph 111(2)(*b*) or (*c*);

(*bb*) requiring a transportation company to collect and give to an immigration officer any written report required to be made to an immigration officer by any person leaving Canada;

(*cc*) specifying the manifests, bills of health or other records or documents concerning persons carried by vehicles to or from Canada that shall be maintained and carried on vehicles;

(*dd*) requiring the identification, supervision and detention of persons to be carried in transit through Canada;

(*ee*) specifying the obligations and duties of transportation companies and members of crews to safeguard persons on board vehicles, to report the escape of persons in

x) régissant la manière dont les agents d'immigration doivent remplir leurs fonctions et exercer leurs pouvoirs au Canada ou à l'étranger;

y) établissant la procédure de présentation de demandes visées aux alinéas 15(2) ou 16(1) et les renseignements qu'elles doivent contenir;

z) exigeant que toutes personnes ou catégories de personnes, à l'exception des citoyens canadiens, soient en possession d'un passeport ou autre document de voyage en cours de validité;

aa) fixant le sort et, notamment, la restitution de tout document de voyage ou autre, saisi et détenu en vertu des alinéas 111(2)*b*) ou *c*);

bb) obligeant un transporteur à recueillir et à remettre à un agent d'immigration tout rapport écrit que les personnes quittant le Canada doivent faire à celui-ci;

cc) prévoyant la tenue, à bord des véhicules transportant des personnes à destination ou en provenance du Canada, de manifestes, bulletins de santé ou autres registres et documents relatifs à ces personnes;

dd) exigeant l'identification, la surveillance et la détention des personnes en transit au Canada;

ee) imposant aux transporteurs et aux membres d'équipage l'obligation d'assurer la sécurité à bord des véhicules, de signaler l'évasion des personnes placées sous leur garde et de prendre les précautions nécessaires pour éviter leur entrée en fraude au Canada, et de s'assurer du départ des personnes placées sous leur garde et qui doivent quitter le Canada en vertu de la présente loi;

ff) obligeant les responsables de véhicule à faire un rapport écrit à un agent d'immigration sur les passagers clandestins se trouvant à bord d'un véhicule qui arrive au Canada et à les détenir sous garde à bord du véhicule;

gg) obligeant le propriétaire ou le responsable d'un véhicule à tenir et à fournir à un agent d'immigration supérieur la liste des membres d'équipage ainsi que les renseignements concernant leur congédiement,

POOR COPY
COPIE DE QUALITEE INFERIEURE

their custody and to take such precautions as may be required to prevent such persons from unlawfully coming into Canada and, in the case of persons in their custody who are required under this Act to leave Canada, from failing to leave Canada;

(*ff*) requiring the master of a vehicle to make a written report to an immigration officer in respect of any person who has secreted himself in or on a vehicle coming to Canada and to hold such person in custody on the vehicle;

(*gg*) requiring the owner or master of a vehicle to maintain and provide a senior immigration officer with lists and other information concerning the members of the crew of the vehicle and their discharge, transfer, desertion or hospitalization in Canada and to notify a senior immigration officer of any such discharge, transfer, desertion or hospitalization in Canada;

(*hh*) providing for the disposition of property carried by persons who die in Canada while at an immigrant station or other place in the custody or under the supervision of an immigration officer; and

(*ii*) prescribing any matter required or authorized by this Act to be prescribed.

leur mutation, leur défection ou leur hospitalisation au Canada, et à porter ces faits à la connaissance de cet agent;

hh) prévoyant le sort des biens amenés par les personnes qui décèdent dans un poste d'attente ou à tout autre lieu au Canada alors qu'elles sont sous la garde ou la surveillance d'un agent d'immigration; et

ii) régissant tout sujet qui, aux termes de la présente loi, peut ou doit l'être par règlement.

Exemption from regulations

(2) The Governor in Council may by regulation exempt any person from any regulation made under subsection (1) or otherwise facilitate the admission of any person where the Governor in Council is satisfied that the person should be exempted from such regulation or his admission should be facilitated for reasons of public policy or due to the existence of compassionate or humanitarian considerations.

Dispense

(2) Lorsqu'il est convaincu qu'une personne devrait être dispensée de tout règlement établi en vertu du paragraphe (1) ou que son admission devrait être facilitée pour des motifs de politique générale ou des considérations d'ordre humanitaire, le gouverneur en conseil peut, par règlement, dispenser cette personne du règlement en question ou autrement faciliter son admission.

Coming into force of certain regulations

(3) No regulation made under paragraph (1)(*a*), (*b*) or (*c*) shall come into force until thirty days after it has been published in the *Canada Gazette*, and the text of such regulation shall be laid before Parliament as soon as practicable.

Entrée en vigueur

(3) Les règlements établis en vertu des alinéas (1)*a*), *b*) ou *c*) entreront en vigueur au plus tôt trente jours après leur publication dans la *Gazette du Canada* et leur texte sera déposé devant le Parlement dès que possible.

Terms and conditions re landing

(4) For the purpose of this Act and the regulations, whenever a person is granted landing and terms and conditions are imposed, no such term or condition may specify the area in which that person shall reside.

Conditions relatives au droit d'établissement

(4) Aux fins de la présente loi et des règlements, lorsqu'une personne obtient le droit d'établissement à certaines conditions, aucune de ces dernières ne peut indiquer dans quelle région cette personne doit résider.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Orders

Powers of Minister

116. The Minister may, by order,

(*a*) establish such forms as he deems necessary for the purposes of the administration of this Act other than forms relating to appeals, applications for redetermination and applications for release made to the Board; and

(*b*) designate ports of entry and immigrant stations for the purposes of this Act.

Ordres

Pouvoirs du Ministre

116. Le Ministre peut, par ordre,

a) établir les formulaires qu'il juge nécessaires pour l'application de la présente loi, autres que ceux relatifs aux appels, demandes de réexamen et demandes de mise en liberté soumis à la Commission; et

b) désigner, aux fins de la présente loi, des points d'entrée et des postes d'attente.

Landings Authorized by Minister

Landings where unexecuted deportation orders

117. Notwithstanding any other provision of this Act or the regulations, the Minister may quash a deportation order that was made against any person under the authority of the *Immigration Act* as it read before the 13th day of November, 1967 and authorize the landing of any such person, where the order has not been executed.

Droit d'établissement accordé par le Ministre

Droit d'établissement en cas de non exécution d'une ordonnance d'expulsion

117. Par dérogation à toute autre disposition de la présente loi ou des règlements, le Ministre peut annuler toute ordonnance d'expulsion non exécutée, rendue en vertu de la *Loi sur l'immigration* dans sa teneur avant le 13 novembre 1967, et accorder le droit d'établissement à la personne qui en fait l'objet.

Evidence

Proof of documents

118. (1) Every document purporting to be a removal order, rejection order, departure notice, warrant, order, summons, direction, notice or other document signed by the Minister, the Minister of National Health and Welfare, the Deputy Minister, an adjudicator, an immigration officer, a master or other person authorized or required by or under this Act to make such document is, in any prosecution or other proceeding under or arising out of this Act, evidence of the facts contained therein without proof of the signature or the official character of the person appearing to have signed the document, unless called into question by the Minister or any person acting for him or for Her Majesty.

Preuve

Preuve des documents

118. (1) Tout document ayant l'apparence d'une ordonnance de renvoi ou de refoulement, d'un avis d'interdiction de séjour, d'un mandat, ordre, citation à comparaître, instruction, avis ou autre document signé par le Ministre, le ministre de la Santé nationale et du Bien-être social, le sous-ministre, un arbitre, un agent d'immigration, un responsable de véhicule ou toute autre personne qui peut ou qui doit les établir en vertu de la présente loi, fait foi de son contenu dans toute poursuite ou autre procédure relevant de la présente loi, sans qu'il soit nécessaire d'établir l'authenticité des signatures ni le caractère officiel de la personne l'ayant apparemment signé; cette authenticité et ce caractère officiel ne peuvent être contestés que par le Ministre ou par une personne agissant en son nom ou au nom de Sa Majesté.

Forms established by Minister

(2) Every form purporting to be a form established by the Minister shall be deemed to be a form established by the Minister under this Act unless called into question by the Minister or any person acting for him or for Her Majesty.

Formulaires établis par le Ministre

(2) L'authenticité des formulaires apparemment établis par le Ministre en vertu de la présente loi ne peut être contestée que par le Ministre ou par une personne agissant en son nom ou au nom de Sa Majesté.

PART OF DOCUMENT CUT OFF
Partie du document coupé

POOR COPY
COPIE DE QUALITEE INFERIEURE

Reports privileged

119. No security or criminal intelligence report referred to in subsection 39(1), 40(1) or 83(1) may be required to be produced in evidence in any court or other proceeding.

Immunité pour certains rapports

119. Nul ne peut, devant une Cour ou dans une procédure quelconque, exiger la production des rapports secrets en matière de sécurité ou de criminalité, visés au paragraphe 39(1), 40(1) ou 83(1).

Recovery of Payments, Costs and Fines

Répétition des paiements et recouvrement des frais et des amendes

Recovery for breach of undertakings

120. (1) Where any person or organization gives an undertaking to the Minister to assist any immigrant in becoming successfully established in Canada, that undertaking may by notice in writing be assigned by the Minister to Her Majesty in right of any province and any payments of a prescribed nature made directly or indirectly to that immigrant that result from a breach of that undertaking may be recovered from the person or organization that gave the undertaking in any court of competent jurisdiction as a debt due to Her Majesty in right of Canada or in right of any province to which the undertaking is assigned.

Répétition des paiements en cas de violation d'un engagement

120. (1) Au cas où une personne ou une organisation s'engage auprès du Ministre à aider un immigrant à s'établir avec succès au Canada, le Ministre peut, par avis écrit, céder à Sa Majesté du chef d'une province ses droits découlant de cet engagement; les paiements réglementaires effectués directement ou indirectement à l'immigrant, par suite d'une violation de l'engagement, peuvent être répétés, devant tout tribunal compétent, auprès de la personne ou de l'organisation qui s'est engagée, à titre de créance de Sa Majesté du chef du Canada ou du chef de la province à qui la cession a été faite.

Debt due to Crown

(2) All costs of removal or detention incurred by Her Majesty for which any person is liable under this Act and all fines and court costs that may be imposed on any person under this Act may be recovered as a debt due to Her Majesty.

Créances de la Couronne

(2) Les frais de renvoi et de détention qui incombent à une personne en vertu de la présente loi et qui sont supportés par Sa Majesté ainsi que les amendes et frais de justice incombant à une personne en vertu de cette loi peuvent être recouvrés comme créances de Sa Majesté.

Charge on property

(3) All payments made and all costs of removal or detention incurred by Her Majesty in right of Canada or in right of any province for which any person or organization is liable under this Act and all fines and court costs that may be imposed on any person or organization under this Act shall, until payment thereof, be a charge upon the property of the person or organization and may be enforced or collected by the seizure and sale of such property or a portion thereof under the warrant or order of a superior, county or district court.

Privilège

(3) Sa Majesté détient un privilège sur les biens de toute personne ou de toute organisation à qui incombent, en vertu de la présente loi, les paiements, les frais de renvoi ou de détention supportés par Sa Majesté du chef du Canada ou d'une province ainsi que les amendes et les frais de justice pouvant être mis à la charge de cette personne ou de cette organisation; la répétition de ces paiements et le recouvrement de ces frais et amendes peuvent être effectués par voie de saisie et de vente totale ou partielle de ces biens par suite d'un mandat ou d'une ordonnance d'une cour supérieure, d'une cour de comté ou d'une cour de district.

Loans to Immigrants

Prêts aux immigrants

Loans to immigrants

121. (1) The Minister of Finance may, from time to time, advance to the Minister out of the Consolidated Revenue Fund such

Prêts aux immigrants

121. (1) Le ministre des Finances peut, sur le Fonds du revenu consolidé, avancer au Ministre les sommes qu'il demande pour

PART OF DOCUMENT CUT OFF
Partie du document coupé

POOR COPY
COPIE DE QUALITEE INFERIEURE

sums as the Minister may require to enable him to make loans to immigrants and such other classes of persons as may be prescribed for the purpose of

(*a*) paying the costs of establishing that they and their families may be granted admission;

(*b*) paying the costs of obtaining transportation to Canada and transportation from the port of arrival to the place of destination in Canada for them and their families; and

(*c*) paying the reasonable living expenses of such persons and their families and such other expenses as are prescribed in order to assist those persons in establishing themselves successfully in Canada.

faire des prêts aux immigrants et aux catégories de personnes prescrites, en vue de leur permettre d'acquitter

a) les frais afférents à la preuve de leur admissibilité et de celle de leur famille;

b) le coût du voyage au Canada et les frais de transport du point d'arrivée au point de destination au Canada, pour eux-mêmes et pour leur famille; et

c) les frais raisonnables de leur séjour et de celui de leur famille ainsi que les autres frais prévus par les règlements pour les aider à s'établir avec succès au Canada.

Repayment to Receiver General

(2) The Minister shall pay to the Receiver General all moneys he receives by way of repayments of loans made under subsection (1) and all payments of interest thereon.

(2) Le Ministre doit verser au receveur général les sommes qu'il reçoit à titre d'intérêts et de remboursement des prêts visés au paragraphe (1).

Remboursement au receveur général

Limitation

(3) The total amount of outstanding advances to the Minister under this section shall not at any time exceed twenty million dollars.

(3) Le montant total des avances faites au Ministre en vertu du présent article et non encore remboursées, ne pourra à aucun moment dépasser vingt millions de dollars.

Limite

Report to Parliament

(4) The Minister shall, within three months following the commencement of each fiscal year or, if Parliament is not then sitting, within the first fifteen days next thereafter that Parliament is sitting, lay before Parliament a report setting out the total number and amount of loans made under subsection (1) during the preceding fiscal year.

(4) Le Ministre doit déposer devant le Parlement, dans les trois premiers mois de chaque exercice financier ou, si le Parlement ne siège pas, dans les quinze premiers jours de la prochaine séance, un rapport indiquant le nombre et le montant des prêts consentis en vertu du paragraphe (1) au cours de l'exercice financier précédent.

Rapport au Parlement

Assistance on Leaving Canada

Aide au départ du Canada

Assistance in certain cases

122. The Minister may direct that the costs of transportation from Canada and any related expenses be paid out of moneys appropriated by Parliament in the case of a person

(*a*) whose costs of transportation are not, under this Act, payable by a transportation company;

(*b*) who should, in the opinion of the Minister, be assisted in leaving Canada in order to avoid separation of a family or for other good cause; and

(*c*) who is, in the opinion of the Minister, unable to defray, without hardship, his own costs of transportation.

122. Le Ministre peut ordonner de payer, au moyen de fonds votés par le Parlement, les frais de transport pour quitter le Canada et les dépenses afférentes d'une personne

a) dont les frais de transport ne sont pas à la charge d'un transporteur en vertu de la présente loi;

b) qu'il estime devoir aider à quitter le Canada pour éviter qu'elle ne soit séparée de sa famille ou pour toute autre raison valable; et

c) qui, à son avis, ne peut pas, sans privations, acquitter ses frais de transport.

Cas où l'aide peut être accordée

POOR COPY
COPIE DE QUALITEE INFERIEURE

Delegation

Delegation of authority

123. The Minister or the Deputy Minister, as the case may be, may authorize such persons employed in the public service of Canada as he deems proper to exercise and perform any of the powers, duties and functions that may or are required to be exercised or performed by him under this Act or the regulations, other than the powers, duties and functions referred to in paragraphs 19(1)(*e*) and 19(2)(*a*), subsections 39(1) and 40(1), paragraph 42(*b*) and subsection 83(1), and any such duty, power or function performed or exercised by any person so authorized shall be deemed to have been performed or exercised by the Minister or Deputy Minister, as the case may be.

Transitional

Permit holders

124. (1) Where a person who was a member of a prohibited class designated in section 5 of the *Immigration Act*, as it read before it was repealed by subsection 128(1) of this Act, is, upon the coming into force of this Act, not in an inadmissible class and is the holder of a permit issued by the Minister under that Act for a period of twelve months, he may make an application for landing in Canada.

Deemed date of landing

(2) Where a person has been granted landing pursuant to an application made under subsection (1), that person shall, for the purpose of the *Citizenship Act*, be deemed to have been granted landing on the earlier of the day on which he came into Canada under the authority of the permit referred to in subsection (1), or, where he is and has been in Canada under the authority of such a permit for a continuous period of time in excess of twelve months, the first day of that continuous period of time.

Continuation of Immigration Appeal Board

125. (1) The Immigration Appeal Board established by section 3 of the *Immigration Appeal Board Act* as it read before it was repealed by subsection 128(1) of this Act and the Board established by this Act are hereby declared for all purposes to be one and the same body.

Délégation

Délégation de pouvoirs

123. Le Ministre ou le sous-ministre peut, lorsqu'il le juge nécessaire, déléguer à des employés de la fonction publique du Canada les pouvoirs et fonctions que lui confèrent la présente loi ou les règlements, à l'exception de ceux qui sont visés aux alinéas 19(1)*e*) et 19(2)*a*), aux paragraphes 39(1) et 40(1), à l'alinéa 42*b*) et au paragraphe 83(1). Les actes accomplis par lesdits fonctionnaires sont réputés l'avoir été par le Ministre ou le sous-ministre, selon le cas.

Dispositions transitoires

Titulaires de permis

124. (1) Toute personne qui faisait partie d'une catégorie interdite visée à l'article 5 de la *Loi sur l'immigration*, abrogée par le paragraphe 128(1) de la présente loi, et qui, à l'entrée en vigueur de la présente loi, ne fait pas partie d'une catégorie non admissible et est titulaire d'un permis émis par le Ministre en vertu de la précédente loi pour une période de douze mois, peut présenter une demande de droit d'établissement au Canada.

Date d'octroi du droit d'établissement

(2) La personne qui a obtenu le droit d'établissement à la suite d'une demande présentée en vertu du paragraphe (1) est réputée, aux fins de la *Loi sur la citoyenneté*, l'avoir obtenu soit le jour de son entrée au Canada sous le couvert du permis visé au paragraphe (1), soit, si elle séjourne au Canada depuis une période ininterrompue de plus de douze mois sous le couvert d'un tel permis, le premier jour de ladite période; la plus ancienne de ces deux dates étant retenue.

Maintien de la Commission d'appel de l'immigration

125. (1) La Commission d'appel de l'immigration établie par l'article 3 de la *Loi sur la Commission d'appel de l'immigration* avant son abrogation par le paragraphe 128(1) de la présente loi et la Commission instituée par la présente loi sont, à toutes fins, déclarées par les présentes constituer une seule et même institution.

POOR COPY
COPIE DE QUALITEE INFERIEURE

Rules continued

(2) All rules made by the Immigration Appeal Board under section 8 of the *Immigration Appeal Board Act* as it read before it was repealed by subsection 128(1) of this Act that were in force immediately before the coming into force of this Act shall be deemed to have been made under section 67 of this Act and shall, to the extent that they are not inconsistent with this Act, continue in force until revoked or altered by the Immigration Appeal Board by rules made under the authority of that section.

Maintien des règles

(2) Toutes les règles établies par la Commission d'appel de l'immigration en vertu de l'article 8 de la *Loi sur la Commission d'appel de l'immigration* avant son abrogation par le paragraphe 128(1) de la présente loi et qui étaient en vigueur avant l'entrée en vigueur de celle-ci, sont réputées avoir été établies en vertu de l'article 67 de la présente loi et, dans la mesure où elles ne sont pas incompatibles avec la présente loi, restent en vigueur jusqu'à leur abrogation ou leur modification par la Commission d'appel de l'immigration, aux termes des règles établies sous l'empire de cet article.

Proceedings continued

(3) Every proceeding taken before the Immigration Appeal Board before the coming into force of this Act shall be taken up and continued under and in conformity with this Act.

Poursuite des procédures

(3) Toute procédure engagée devant la Commission d'appel de l'immigration avant l'entrée en vigueur de la présente loi doit être reprise et poursuivie en vertu et en conformité de la présente loi.

Transitional

126. For greater certainty,

(*a*) a deportation order made under the *Immigration Act*, as it read before it was repealed by subsection 128(1) of this Act, shall be deemed to be a penalty, forfeiture or punishment within the meaning of paragraph 36(*e*) of the *Interpretation Act*;

(*b*) a person who was granted admission as a non-immigrant under the *Immigration Act* as it read before it was repealed by subsection 128(1) of this Act, other than a person who was granted admission pursuant to paragraph 7(2)(*c*) of that Act, shall be deemed to have been granted admission as a visitor; and

(*c*) when a report concerning a person has been made under section 22 of the *Immigration Act*, as it read before it was repealed by subsection 128(1) of this Act, and a further examination or an inquiry, as the case may be, has not been held concerning that person pursuant to that Act, the report shall be deemed to have been made to a senior immigration officer pursuant to paragraph 20(1)(*a*) of this Act.

Dispositions transitoires

126. Pour plus de certitude, il est précisé que

a) toute ordonnance d'expulsion rendue en vertu de la *Loi sur l'immigration*, abrogée par le paragraphe 128(1) de la présente loi, est réputée constituer une peine, confiscation ou punition au sens de l'alinéa 36*e*) de la *Loi d'interprétation*;

b) toute personne qui a obtenu l'admission à titre de non-immigrant en vertu de la *Loi sur l'immigration*, abrogée par le paragraphe 128(1) de la présente loi, à l'exception de celle qui a obtenu l'admission en vertu de l'alinéa 7(2)*c*) de la loi abrogée, est réputée l'avoir obtenue à titre de visiteur; et

c) le rapport, visé à l'article 22 de la *Loi sur l'immigration*, abrogée par le paragraphe 128(1) de la présente loi, concernant une personne qui n'a pas fait l'objet d'une enquête complémentaire ou d'une enquête en vertu de la loi abrogée, est réputé avoir été fait à un agent d'immigration supérieur conformément à l'alinéa 20(1)*a*) de la présente loi.

Idem

127. Where a person acquired Canadian domicile in accordance with the *Immigration Act* as it read before it was repealed by subsection 128(1) of this Act and did not lose Canadian domicile before the coming

Idem

127. Toute personne ayant acquis le domicile canadien en vertu de la *Loi sur l'immigration*, abrogée par le paragraphe 128(1) de la présente loi et qui, lors de l'entrée en vigueur de la présente loi, ne l'avait pas

POOR COPY
COPIE DE QUALITEE INFERIEURE

into force of this Act, a deportation order may not be made against that person on the basis of any activity carried on by him before the coming into force of this Act for which a deportation order could not have been made against him under the *Immigration Act* as it read before it was repealed by subsection 128(1) of this Act.

perdu, ne peut faire l'objet d'une ordonnance d'expulsion motivée par des activités antérieures à l'entrée en vigueur de la présente loi et qui ne constituaient pas un motif d'expulsion en vertu de la loi abrogée par le paragraphe 128(1) de la présente loi.

Repeal

Repeal

128. (1) The *Immigration Aid Societies Act*, being chapter 146 of the Revised Statutes of Canada, 1952, the *Alien Labour Act*, being chapter A-12 of the Revised Statutes of Canada, 1970, the *Immigration Act*, being chapter I-2 of the Revised Statutes of Canada, 1970, and the *Immigration Appeal Board Act*, being chapter I-3 of the Revised Statutes of Canada, 1970, are repealed.

Amendments and repeals

(2) The Acts or parts of Acts set out in the schedule to this Act are repealed or amended in the manner and to the extent indicated in that schedule.

Abrogation

Abrogation

128. (1) Sont abrogées la *Loi sur les sociétés auxiliatrices de l'immigration*, chapitre 146 des Statuts revisés du Canada de 1952, la *Loi sur le travail des aubains*, chapitre A-12 des Statuts revisés du Canada de 1970, la *Loi sur l'immigration*, chapitre I-2 des Statuts revisés du Canada de 1970 et la *Loi sur la Commission d'appel de l'immigration*, chapitre I-3 des Statuts revisés du Canada de 1970.

Modifications et abrogations

(2) Les lois ou dispositions de lois visées à l'annexe de la présente loi sont abrogées ou modifiées de la manière et dans la mesure indiquées à cette même annexe.

Commencement

Coming into force

129. This Act shall come into force on a day to be fixed by proclamation.

Entrée en vigueur

Entrée en vigueur

129. La présente loi entre en vigueur à la date fixée par proclamation.

POOR COPY
COPIE DE QUALITEE INFERIEURE